

WSR 22-05-008

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed February 3, 2022, 1:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-064.

Title of Rule and Other Identifying Information: WAC 182-503-0535 Washington apple health—Citizenship and immigration status, and 182-507-0135 Immigration status requirement for refugee medical assistance (RMA).

Hearing Location(s): On March 22, 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_gEBGwLk6Qxqjm9TlhCYM8A. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than March 23, 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 March 22, 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 March 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending the definition of qualified alien in WAC 182-503-0535 to include certain persons from Iraq and Afghanistan. The agency is amending WAC 182-507-0135 to add certain persons from Iraq and Afghanistan to the individuals eligible for refugee medical assistance.

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 necessary because of federal law, Section 602 (b) (1) of the Afghan Allies Protection Act of 2009; Section 1059(a) of the National Defense Authorization Act of 2006; Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

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: Dody McAlpine, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-9964.

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 proposed rule pertains to client program eligibility and does not impose any costs on businesses.

February 3, 2022
Wendy Barcus
Rules Coordinator

OTS-3506.1

AMENDATORY SECTION (Amending WSR 21-19-029, filed 9/9/21, effective 10/10/21)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than (~~(twenty-one)~~) 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than (~~(twenty-one)~~) 21 years of age. In that case, the child retains qualified alien status even after he or she turns (~~(twenty-one)~~) 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unremarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602(b)(1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

~~((xii))~~ (xiii) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than ~~((twenty-one))~~ 21 years of age.

~~((xiii))~~ (xiv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least ~~((fifty))~~ 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.
- (e) An undocumented person may be eligible for:
 - (i) Alien medical programs;
 - (ii) State-only funded apple health for kids; or
 - (iii) State-only funded apple health for pregnant women.
- (3) **The five-year bar.**
 - (a) A qualified alien meets the five-year bar if he or she:
 - (i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or
 - (ii) Entered the U.S. before August 22, 1996, and:
 - (A) Became a qualified alien before August 22, 1996; or
 - (B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.
 - (b) A qualified alien is exempt from the five-year bar if he or she is:
 - (i) A qualified alien as defined in subsection (1)(b)(vi) through ~~((xiii))~~ (xiv) of this section;
 - (ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:
 - (A) An active-duty member of the U.S. military, other than active-duty for training;
 - (B) An honorably discharged U.S. veteran;
 - (C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or
 - (D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

OTS-3507.1

AMENDATORY SECTION (Amending WSR 12-19-001, filed 9/5/12, effective 10/6/12)

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;

(c) Granted conditional entry under section 203 (a) (7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; or

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a) (27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006.

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1) (a) through ~~((g))~~ (i) of this section.

[Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]

WSR 22-05-014
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed February 4, 2022, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-024.

Title of Rule and Other Identifying Information: WAC

388-101D-0070 Background checks—National fingerprint background checks.

Hearing Location(s): On March 22, 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/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. 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 before March 23, 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 March 22, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m., on March 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) amended WAC 388-101D-0070 to align it with 28 C.F.R. Section 20.33(d).

Reasons Supporting Proposal: Subsection (3) was too broad in how long it allowed a fingerprint result to remain valid. Removing subsection (3) aligns this rule with federal regulations. Additionally, the FBI audit guide for noncriminal justice access to criminal history record information (CHRI), has determined that reuse of CHRI is permitted for the "same purpose" but only "within a relatively short period of time."

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 74.39A.056.

Rule is necessary because of federal law, 28 C.F.R. Section 20.33(d).

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1575; Implementation and Enforcement: Heather Lum, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1526.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

February 4, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4910.1

AMENDATORY SECTION (Amending WSR 17-03-062, filed 1/10/17, effective 2/1/17)

WAC 388-101D-0070 Background checks—National fingerprint background checks. (1) ~~((Administrators and all caregivers who are))~~ An applicant as defined in WAC 388-113-0010 hired on or after January 1, 2016, ~~((and are))~~ who is not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the ~~((service))~~ provider must not employ, directly or by contract, an administrator, employee, volunteer, student or subcontractor who has a:

(a) Disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 ~~((7))~~ WAC; or ~~((that is a))~~

(b) Disqualifying negative action under WAC 388-78A-2470 or WAC 388-76-10180.

~~((3) The service provider may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.))~~

[WSR 17-03-062, recodified as § 388-101D-0070, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapters 71A.12, 74.34, and 74.39A RCW. WSR 16-18-040, § 388-101-3202, filed 8/30/16, effective 9/30/16.]

WSR 22-05-018
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed February 4, 2022, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-070.

Title of Rule and Other Identifying Information: WAC 415-204-480

Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit?

Hearing Location(s): On March 22, 2022, at 9:30 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Join Zoom meeting <https://us02web.zoom.us/j/89813498901?pwd=YzFlaSs4U0RISWhuamZ0ZFVMZjVPUT09>, phone 253-215-8782, Meeting ID 898 1349 8901, Passcode 830876.

Date of Intended Adoption: March 23, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by March 21, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, email drs.rules@drs.wa.gov, by March 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify the process for conducting periodic reviews to confirm continued eligibility for law enforcement officers' and firefighters' (LEOFF) Plan 2 catastrophic disability benefits.

Reasons Supporting Proposal: In accordance with RCW 41.26.470(9), this rule amendment clarifies how the department will determine if a LEOFF Plan 2 member continues to be eligible for catastrophic disability benefits.

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.

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.

February 4, 2022
Rubi Reaume
Rules Coordinator

OTS-3523.2

AMENDATORY SECTION (Amending WSR 21-01-209, filed 12/23/20, effective 1/23/21)

WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit? (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least (~~twelve~~) 12 months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Examples:

- Totally disabled, but not from duty injury - Not eligible for catastrophic disability benefit.

A LEOFF Plan 2 member suffers a knee injury on duty, leaving the member disabled from LEOFF employment. The knee injury, by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability because the fully disabling condition, ALS, is not duty related.

- Totally disabled, duty injury totally disabling - Eligible for catastrophic disability benefits.

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, by itself, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving the member fully disabled. The Social Security Administration grants the member a full disability based on the member's total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, by themselves, render the member totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw (~~one hundred fifty~~) 150 percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement.

(4) If you receive catastrophic duty disability benefits, the department will periodically review your income and medical status for continued eligibility. This review is not a reassessment of your initial determination, but an assessment of whether there has been any change in your condition. If it is determined that there has been a change in your condition and you are no longer eligible under subsection (1) of this section, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement

status. DRS will notify you of your review at least 30 days before the beginning of your review.

(a) Income review: At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (5)(c) of this section. ((The documentation must include a signed copy of your filed tax return showing income from all sources for the prior year.)) You must also notify the department within ((thirty)) 30 calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment. (See subsection (5)(c), (d) and (f) of this section.) If DRS is not notified on time, you may be responsible for any resulting overpayment.

Documentation you may need to provide includes a federal or state income tax return from the most recent year, a copy of savings, checking or other bank accounts for the most recent two months, or other documentation as requested by the department.

(b) Medical review: The department will conduct a continuing disability review (CDR) at least once every three years if at the time of your last determination your condition is expected to improve, or every six years if your condition is not expected to improve, until you reach age ((sixty-five)) 65. The department may increase the frequency of your CDRs ((if your condition is expected to improve,)) and reserves the right to require a CDR at any time ((at its discretion)) if notified of a change in your condition, but not more than once every 12 months. The department may also waive the CDR if your disability is determined to be permanent or terminal.

(i) DRS will first review any updated medical information available from any labor and industries claims related to your line of duty injury to determine if additional medical information is needed from you and your primary care provider.

(ii) If needed, the department will provide you with a Disability Review form, which asks for information about whether your medical condition has improved since your last eligibility determination. You will have at least 30 days to complete and return this form to the department or notify the department that you need additional time. Once received, the department will have 90 days to review this information and either notify you of your continued eligibility or the need for additional information. Before making a change to your disability retirement status, the department will consult with a contracted vendor for the purpose of providing an independent medical review.

(5) **Definitions.** As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.26.470(9).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department's medical professional will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section includes compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

[Statutory Authority: RCW 41.50.050. WSR 21-01-209, § 415-104-480, filed 12/23/20, effective 1/23/21; WSR 18-13-078, § 415-104-480, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-480, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5) and 41.26.470 (6) and (7). WSR 06-18-007, § 415-104-480, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5) and 41.26.470. WSR 04-22-074, § 415-104-480, filed 11/1/04, effective 12/2/04.]

WSR 22-05-039
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed February 8, 2022, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR April 27, 2021 [21-10-029].

Title of Rule and Other Identifying Information: Original notice was provided in WSR 21-10-029 to change the public records WAC, updating them to current practices and procedures for chapter 139-02 WAC.

Hearing Location(s): On June 8, 2022, at 10 a.m. - 12 p.m., at 19010 1st Avenue South, Burien, WA 98148, or virtual at cjtc.wa.gov.

Date of Intended Adoption: June 8, 2022.

Submit Written Comments to: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, email dzable@cjtc.wa.gov, by June 7, 2022.

Assistance for Persons with Disabilities: Contact Derek Zable, phone 206-835-7350, email dzable@cjtc.wa.gov, by June 7, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule updates the commission's public records WAC to current best practices and to the current procedures within the commission. It also updates the format of the existing WAC for accessibility and referencing.

Reasons Supporting Proposal: Updating the public records WAC for the commission allows clarity for requestors, notice of what our current practices and procedures are, and for a common reference of the requirements of the public records officer.

Statutory Authority for Adoption: RCW 43.101.080, 42.56.040.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, 206-835-7350.

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 rule content is explicitly and specifically dictated by statute.

February 8, 2022
Derek Zable
Records Manager

OTS-3600.1

AMENDATORY SECTION (Amending WSR 09-13-066, filed 6/16/09, effective 7/17/09)

WAC 139-02-010 Authority and purpose. (~~((1) RCW 42.56.070(1) requires each agency to make available for inspection and copying non-exempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act (the act), that exempts or prohibits the disclosure of public records held by that agency.~~

~~(2) The purpose of these rules is to establish the procedures the Washington state criminal justice training commission shall follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington state criminal justice training commission and establish processes for both requestors and Washington state criminal justice training commission staff that are designed to best assist members of the public in obtaining such access.~~

~~(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the Washington state criminal justice training commission shall be guided by the provisions of the act describing its purposes and interpretation.)~~ (1) These rules establish procedures the Washington state criminal justice training commission will follow to provide full access to public records. These rules:

(a) Provide information to persons wishing to request commission public records; and

(b) Establish processes for both requestors and commission staff to fully assist the public in obtaining such access.

(2) In carrying out its public records responsibilities the commission will be guided by the provisions of chapter 42.56 RCW, the Public Records Act.

[Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-010, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-02-010, filed 8/4/00, effective 9/4/00.]

NEW SECTION

WAC 139-02-021 Definitions. The definitions set forth in RCW 42.56.010 apply throughout this chapter. In addition, the definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial purposes" means a business activity by any form of business enterprise intended to generate revenue or financial benefit.

(2) "Customary business hours" refers to Burien administrative office hours which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the commission is closed.

(3) "Commission" or "agency" means the Washington state criminal justice training commission established in chapter 43.101 RCW. Where appropriate, commission or agency also refers to the staff and employees of the Washington state criminal justice training commission.

(4) "Days" means calendar days unless otherwise stated.

(5) "Electronic format" or "electronic records" or "electronic records format" refer to digital records as distinct from paper; examples include email, Word or Excel documents, PDF, or media files.

(6) "Executive director" means the executive director of the Washington state criminal justice training commission.

(7) "Page" means one impression/image on a single side of a sheet of paper. It also applies to one electronic image of a single side of a sheet of paper. For example, the commission considers a physical sheet of paper with an impression/image on both sides as two pages.

(8) "Public Records Act" means the same as chapter 42.56 RCW.

(9) "Public records officer" means the public records officer or designee for the commission appointed by the executive director.

(10) "Request" or "public records request" means a public records request made pursuant to chapter 42.56 RCW.

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AMENDATORY SECTION (Amending WSR 21-07-039, filed 3/10/21, effective 4/10/21)

WAC 139-02-040 About the Washington state criminal justice training commission and public records officer. (1) The Washington state criminal justice training commission is the state training academy for law enforcement and corrections professionals. The (~~Washington state criminal justice training~~) commission's campus is located in Burien, WA at 19010 1st Avenue South. The (~~Washington state criminal justice training~~) commission has a fiscal office in Lacey, WA located at 3060 Willamette Drive N.E.

(2) Any person wishing to request access to public records of the (~~Washington state criminal justice training~~) commission, or seeking assistance in making such a request, should contact the public records officer of the (~~Washington state criminal justice training~~) commission:

Public Records Officer
Washington State Criminal Justice Training Commission
MS: TB-35
19010 1st Avenue South
Burien, WA 98148
Phone: 206-835-7300
Email: Recordsrequests@cjtc.wa.gov

Public records requests can be made and additional information is (~~also~~) available at the (~~Washington state criminal justice training~~) commission's website at cjtc.wa.gov.

(3) The public records officer will oversee compliance with the act, but another (~~Washington state criminal justice training~~) commission staff member may process the request. Therefore, these rules will refer to the public records officer or designee. The public records officer or designee and the (~~Washington state criminal justice training~~) commission will:

(a) Provide the fullest assistance to requestors;

(b) Create and maintain for use by the public and ~~((Washington state criminal justice training))~~ commission officials an index to public records of the ~~((Washington state criminal justice training))~~ commission;

(c) Ensure ~~((that))~~ public records are protected from damage or disorganization; and

(d) Prevent fulfilling public records requests from causing excessive interference with essential functions of the ~~((Washington state criminal justice training))~~ commission.

[Statutory Authority: RCW 43.101.080. WSR 21-07-039, § 139-02-040, filed 3/10/21, effective 4/10/21. Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-040, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 05-01-109, § 139-02-040, filed 12/15/04, effective 1/15/05; WSR 00-17-017, § 139-02-040, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 21-07-039, filed 3/10/21, effective 4/10/21)

WAC 139-02-050 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the ~~((Washington state criminal justice training))~~ commission; 8:00 a.m. ~~((to noon, and 1:00 p.m. to 4:00))~~ to 5:00 p.m., Monday through Friday, excluding legal holidays and days the campus is closed. Records must be inspected at the ~~((offices))~~ Burien campus of the ~~((Washington state criminal justice training))~~ commission.

(2) **Records index.** ~~((An index of public records is available for use by members of the public. The index includes a list of current manuals of the Washington state criminal justice training commission, a current list of laws, other than those listed in chapter 42.56 RCW, that exempts or prohibits disclosure of specific information or records, and current Washington Administrative Code agency rules. The index may be accessed online at ejtc.wa.gov or at the Washington state criminal justice training commission in Burien.))~~

(a) The state general records retention schedule and the commission's unique records retention schedule, as established and approved by the state records committee, serve as the index for the identification and location of the commission's records, including those described in RCW 42.56.070(5).

(b) The current index, as described in subsection (1) of this section, is available to all persons under the same rules and on the same conditions as are applied to public records available for inspection. The index can be found on the commission's website at cjtc.wa.gov.

(3) **Organization and protection of records.**

(a) The ~~((Washington state criminal justice training))~~ commission maintains its records in a reasonably organized manner and takes reasonable actions to protect records from damage and disorganization. ~~((A requestor shall not take Washington state criminal justice training commission records from Washington state criminal justice training commission offices without the permission of the public records officer or designee.))~~ If commission records are maintained in a digital

format, they will be provided digitally in response to a public records request. If records are maintained and inspected on paper, a requestor may ask for copies.

(b) Records will be made available to the requestor for inspection subject to the following restrictions:

(i) Only the public records officer will remove records from the designated inspection area.

(ii) The quantity of records may be limited in accordance with the available space.

(iii) All possible care shall be taken by the requestor to prevent damage to the records.

(iv) Records shall not be marked, altered, cut or mutilated in any way.

(v) During inspection, eating, drinking, and smoking are prohibited.

(vi) Records shall not be defaced in any way including writing on, folding or folding anew if in folded form, tracing or fastening with clips or other fasteners except those that already exist in the file.

(vii) Records must be kept in the order in which received.

(viii) Commission personnel will provide all requested copies of records.

(ix) The public records officer will remove the records from the inspection area when no longer required by the requestor and no later than the end of the customary business hours.

(c) Records may be available on the (~~Washington state criminal justice training~~) commission website at cjtc.wa.gov. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records of the (~~Washington state criminal justice training~~) commission shall make the request in writing using the (~~Washington state criminal justice training~~) commission public record request (~~(form, or)~~) website, by letter, or email addressed to the public records officer. Each request should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and/or an email address; and
- Identification of the public records adequate for the public records officer or designee to locate the records.

(b) Communications seeking commission records sent or provided to unauthorized locations, addresses or staff, will not be accepted or processed as public records request. Any such communication will be processed as general informal inquiries, general correspondence, general requests for information, or discovery as appropriate. The requestor may resubmit his/her request to the public records officer at the Burien office.

(c) If the requestor wishes to have copies of the records made instead of inspecting them, the request should so indicate. Costs will be assessed in compliance with WAC 139-02-070.

(d) If requestors wish to inspect rather than obtain copies of records, they must indicate this preference in their requests (~~(. Pursuant to WAC 139-02-070, standard photocopies are provided at fifteen cents per page, plus postage)~~) and the requestor must follow the rules of requesting to inspect public records provided in WAC 139-02-090(6).

[Statutory Authority: RCW 43.101.080. WSR 21-07-039, § 139-02-050, filed 3/10/21, effective 4/10/21. Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-050, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-02-050, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 09-13-066, filed 6/16/09, effective 7/17/09)

WAC 139-02-070 Costs for providing copies of public records.

~~((1) Costs for paper copies. There is no fee charged for inspecting public records. A requestor may obtain standard black and white photo-copies for fifteen cents per page. Before beginning to make copies, the public records officer or designee may estimate costs of copying the records, and may require a deposit of up to ten percent of all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Washington state criminal justice training commission will not charge sales tax when it makes copies of public records.~~

~~(2) Costs for electronic records. The cost of electronic copies of records shall be the actual cost of the CD, DVD, audio or video tape, or disc.~~

~~(3) Costs of mailing. The Washington state criminal justice training commission may also charge actual costs of mailing, including the cost of the shipping container.~~

~~(4) Payment. Payment may be made by check or money order only, payable to the Washington state criminal justice training commission.)~~ (1) The following copy fees and payment procedures apply to requests to the agency under chapter 42.56 RCW.

(2) **Actual costs.** Pursuant to RCW 42.56.120 (2) (b), the agency is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The agency does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2) (b) and (c), (3), and (4).

(3) There is no fee charged for inspecting public records.

(4) **Costs for paper copies.** The agency will charge for copies of paper records pursuant to the fees in RCW 42.56.120 (2) (b) and (c).

(a) Before beginning to make copies, the public records officer or designee may estimate costs of copying the records and may require a deposit of up to 10 percent of all the records selected by the requestor.

(b) The public records officer or designee may require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

(c) The commission shall not charge sales tax when it makes copies of public records.

(5) **Costs for electronic records.** Electronic copies of records shall be charged as follows pursuant to the fees in RCW 42.56.120 (2)(b) and (c), which includes:

(a) Charge for scanned records or for use of agency equipment for scanning.

(b) Charge for each four electronic files or attachments uploaded to email, or cloud-based data storage service, or other means of electronic delivery.

(c) Charge per gigabyte for records transmitted in an electronic format or for use of agency equipment to send records electronically.

(d) Actual costs of any digital storage media or devices provided by the agency.

(e) Actual costs of a "customized service charge" when the request would require the use of information technology expertise to prepare data compilations or when such customized access services are not used by the agency for other business purposes.

(i) The agency will notify the requestor and take other steps if it will be doing a customized service charge.

(ii) The public records officer or designee may require a deposit of up to 10 percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

(iii) Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

(iv) Public records request fees do not supersede other statutory provisions for copying fees.

(6) **Costs of mailing.** The commission may also charge actual costs of mailing, including the cost of the shipping container.

(7) **Payment.** Payment shall be made payable to the Washington state criminal justice training commission by check or money order only.

(8) **Payment date.** The payment date for fees, deposits, or other costs will be scheduled at a minimum of 30 days, but no more than 45 days, after the required payment is communicated with the requestor. If a requestor fails to pay by the payment date, the request will be closed per WAC 139-02-090(8).

(9) **Summary of charges.** Upon request the commission will provide a summary of the applicable charges before copies are made and the requestor may revise the request to reduce the number of copies, thereby reducing the applicable charges.

(10) **Waiver of charges (reserved).** It is within the discretion of the public records officer or designee to waive copying fees when:

(a) All of the records responsive to an entire request are paper copies only and are 25 or fewer pages; or

(b) All of the records responsive to an entire request are electronic and no more than the equivalent of 100 printed pages.

[Statutory Authority: RCW 43.56.040 [42.56.040]and 43.101.080. WSR 09-13-066, § 139-02-070, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-02-070, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 09-13-066, filed 6/16/09, effective 7/17/09)

WAC 139-02-090 Processing requests for public records. (1) **Providing fullest assistance.** The Washington state criminal justice training commission is charged by statute with adopting rules which provide for how it shall "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee (~~((shall process requests in the order they are received and allowing for the most requests to be processed in the most efficient manner))~~) will evaluate and process requests according to the nature of the request, clarity, volume, and availability of requested records.

(2) **Acknowledging receipt of request.** 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;

(b) Provide the requested records (or provide a bill for the records if applicable) to the requestor;

(c) Provide a reasonable estimate of when records will be available (the public records officer may revise the estimate of when records will be available); (~~((or))~~)

(d) Deny the request and provide a statutory explanation as to the reason for the denial; or

(e) Acknowledge receipt of the request and ask the requestor to clarify all or any part of the request that is unclear and provide to the greatest extent possible a reasonable estimate of the time the commission will require to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing, or by email or letter;

(ii) Clarification may include identifying a record with specificity sufficient for the commission to locate or produce the record;

(iii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the commission need not respond to it. The commission will respond to those portions of a request that are clear.

(3) **Additional time to respond.** Additional time for the commission to respond to a request may be based upon the need to clarify the request, locate and assemble the records requested, notify affected others 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.

~~((3))~~ (4) **Consequences of failure to respond.** If the (~~(Washington state criminal justice training))~~ commission does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

~~((4))~~ (5) **Protecting rights of others.** In the event (~~(that))~~ the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. This notice is given so affected persons may seek an order from a court to prevent or

limit the disclosure. The notice to the affected persons may include a copy of the request.

~~((5))~~ **(6) Records exempt from disclosure.** ~~((Some records are exempt from disclosure, in whole or in part.))~~

(a) The commission reserves the right to determine a public record is exempt in whole or in part consistent with provisions of the Public Records Act or other applicable provision of law.

(b) If the ((Washington state criminal justice training)) commission believes ((that)) 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 explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, 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.

((6)) (c) Certain exemptions other than the Public Records Act itself restrict the disclosure of documents held by the commission. Some examples of such other applicable statutory exemptions include, but are not limited to:

RCW 5.60.060: Attorney-client privileged records.

Chapter 19.108 RCW: Trade secrets.

17 U.S.C. § 106: Copyrighted materials.

(7) The commission reserves the right to delete identifying details when producing any public record when there is reason to believe disclosure of such details would be an invasion of personal privacy protected by RCW 42.56.050.

(8) The commission is prohibited by statute from disclosing lists of individuals or records that may be manipulated to created lists of individuals for commercial purposes pursuant to RCW 42.56.070.

(9) Inspection of public records.

~~(a) ((Consistent with other demands, the Washington state criminal justice training commission will provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document without approval from the public records officer or designee. The requestor will indicate which documents he or she wishes the agency to copy.~~

~~(b) The requestor must claim or review the assembled records within thirty days of the Washington state criminal justice training commission's notification to him or her that the records are available for inspection or copying. The Washington state criminal justice training commission will notify the requestor in writing of this requirement and inform the requestor that he or she is to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the Washington state criminal justice training commission may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which may be processed as a new request.~~

~~(7) **Providing copies of records.** After inspection is complete or in lieu of inspection, the public records officer or designee will make the requested copies or arrange for copying and provide them to the requestor.~~

~~(8)) A requestor must notify the commission in advance of their intent to inspect public records. Using the tracking ID the commission~~

assigns to each public records request a requestor must identify with specificity and in advance the records the requestor wishes to inspect. The commission will assist the requestor in scheduling an appointment for inspection and may propose convenient alternatives to an in-person visit. Public records will be available for inspection during customary business hours and when staff are available to assist the requestor.

(b) When the request to inspect is for a large number of records, the public records officer may schedule inspection in installments.

(c) The commission will notify the requestor of the scheduled appointment. The requestor must inspect the requested records within 30 days of the scheduled appointment. If the requestor or a representative of the requestor fails to inspect the records within the 30-day period or fails to make other arrangements, the commission may close the request and refile the assembled records. If the requestor makes a request for the same records it will be processed as a new request.

(d) Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.

(e) Inspections are conducted in accordance with the requirement that agencies protect the requested records from damage or disorganization. No member of the public shall remove a document from the inspection area or disassemble or alter any public record.

(f) After inspection is complete, the requestor may wish to identify which documents the requestor wishes the agency to copy.

(i) Where the commission charges for copies, the requestor must pay for the copies prior to the copies being provided to the requestor.

(ii) Electronic records will be provided as a link to the records on the commission public records website if the records are located on the public records website, or in a format used by the commission and which is generally commercially available.

(g) When the inspection of the requested records is complete and any requested copies are provided the public records officer will close the records request.

(10) Providing records in installments.

(a) When the request is for a large number of records, the public records officer or designee may provide access for inspection and copying in installments, if he or she reasonably determines that it would be more practical.

(b) If, within ~~((thirty))~~ 30 days, the requestor fails to inspect one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

~~((9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the Washington state criminal justice training commission has completed the request and provided all available (nonexempt) records.~~

~~(10))~~ (c) When the request is for copies of public records, the public records officer may require payment for each installment either prior to providing the installment or prior to providing subsequent installments. In addition, the requestor may be required to provide a deposit up to 10 percent of the estimated cost of copying all records selected by the requestor. If the requestor fails to pay the required cost by the scheduled payment date, the public records officer may close the request.

(11) Closing withdrawn or abandoned request. ((When the requestor either))

(a) The public records officer will close a request when the requestor:

(i) Withdraws the request ((or));

(ii) Fails to fulfill his or her obligations to inspect the records ((or)) 30 days after the scheduled inspection date;

(iii) Fails to clarify an entirely unclear request 30 days after clarification was requested;

(iv) Fails to claim an installment 30 days after records were provided;

(v) Fails to pay required fees for an installment by the scheduled payment date;

(vi) Fails to pay the deposit or final payment for the requested copies ((or)) by the scheduled payment date.

(b) The public records officer will close the request and indicate to the requestor that the Washington state criminal justice training commission has closed the request and refile the assembled records.

~~((11))~~ (12) Later discovered documents. If, after the Washington state criminal justice training commission has informed the requestor that it has provided all available records, the Washington state criminal justice training commission becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

(13) The commission is not required to create a record that does not otherwise exist.

[Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-090, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-02-090, filed 8/4/00, effective 9/4/00.]

NEW SECTION

WAC 139-02-095 Review of denials of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the executive director or designee. The executive director or designee shall immediately consider the petition and either affirm or reverse the denial within two business days following the Washington state criminal justice training commission's receipt of the petition, or within such other time as the commission and the requestor mutually agree upon.

(3) **Exhausting administrative remedies.** Administrative remedies will not be considered exhausted until the commission has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

(4) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure the requestor may request the attorney general's office review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(5) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative approval.

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NEW SECTION

WAC 139-02-105 Commercial purposes. No provisions of any rule contained in this title shall be construed as giving authority to any commission records or public records officer or employee to give, sell, or provide access to lists of individuals requested for commercial purposes. If a list of individuals is included in the records requested, the commission may require requestors to identify themselves and the purpose of their request, and provide a signed statement that the requestor will not use the list of individuals for commercial purposes.

When the commission has credible indication that a requested list of individuals might be used for commercial purposes, the commission will investigate the request further. The commission will determine on a case-by-case basis whether such further investigation is necessary, based on the identity of the requestor, the nature of the records requested, and any other information available to the commission. When the commission determines further investigation is necessary, the commission will require requestors to identify the purpose of their request.

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WSR 22-05-041
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed February 8, 2022, 12:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-076.

Title of Rule and Other Identifying Information: The department is planning to:

- Amend WAC 388-112A-0010 What definitions apply to this chapter?
- Amend WAC 388-112A-0030 [388-112A-0300] What is the seventy-hour long-term care worker basic training?
- Amend WAC 388-71-0836 What definitions apply to the long-term care worker training requirements?
- Amend WAC 388-71-8070 [388-71-0870] What is the seventy hour basic training?
- Add new WAC 388-112A-0305 What are the minimum requirements for training programs to provide remote skills training?
- Add new WAC 388-71-0873 What are the minimum requirements for training programs to provide remote skills training?

Hearing Location(s): On April 5, 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/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual.

Due to the impacts of the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than April 6, 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., April 5, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m., March 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-112A-0010, 388-112A-0030 [388-112A-0300], 388-71-0836, and 388-71-8070 [388-71-0870]; and add new WAC 388-112A-0305 and 388-71-0873.

RCW 18.20.270(9) stipulates that "the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department."

Under gubernatorial suspension of training rules and coordinated efforts to expand opportunities for remote training during the COVID-19 pandemic, DSHS contracted with a DSHS-approved training company to conduct a pilot basic training program in which skills would be taught, demonstrated, reinforced, and remediated remotely.

Data from student prometric skills test pass rates for students involved in the pilot revealed success at a rate equal to that of students trained in person. The success of the pilot indicates that remote skills training is not only feasible but can also be effective.

Remote skills training has the potential to greatly increase the ability for students in remote areas to access training, and in turn augment an already strained long-term care workforce.

There are currently no rules that govern remote skills training. The proposed rules will set standards for remote skills training and update current definitions and basic training rules to allow for virtual classroom and remote skills training. The effect will be to expand opportunities for long-term care worker training statewide, especially in remote areas.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.39A.070, 74.39A.074, 18.20.270, 70.128.230.

Statute Being Implemented: RCW 74.08.090, 74.39A.070, 74.39A.074, 18.20.270, 70.128.230.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2366.

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 David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2366, email david.chappell@dshs.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. Adding standards for remote skills training is consistent with other training sections in this chapter. Training programs choosing to offer remote skills training would incur up front costs in the establishment of necessary systems, equipment, technologies, and student support structures.

Training programs may decide to impose a fee for students to access remote skills training to recuperate costs, a practice which is not unusual for small businesses.

DSHS' aging and long-term support administration has determined that there are no new annual costs to small businesses that are 50 dollars or more per instructor.

A copy of the detailed cost calculations may be obtained by contacting David Chappell, email david.chappell@dshs.wa.gov.

February 8, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4909.1

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0836 What definitions apply to the long-term care worker training requirements? The following definitions apply to the long-term care worker training requirements:

(1) "**Activities of daily living**((~~7~~))" means self-care abilities related to personal care such as bathing, eating, using the toilet, medication assistance, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) "**Care team**" means the client and everyone involved in his or her care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the client's well-being. However, the client directs the care plan.

(3) "**Challenge test**" means a competency test taken for specialty training without first taking the class for which the test is designed and may only be used when basic training is not required.

(4) "**Client**" means an individual receiving in-home services.

(5) "**Competency**" means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

(6) "**Competency testing**" means evaluating a student to determine if he or she can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training, and the specialty and expanded specialty trainings. Training programs may integrate competency testing within their approved curricula.

(7) "**Core basic training**" means the portion of the ((~~seventy-hour~~)) 70-hour long-term care worker basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(8) "**Date of hire**" for determining timeframes related to training and certification, means the date of hire as described in ((~~WAC 246-980-010~~)) chapter 246-980 WAC.

(9) "**DDA**" refers to the developmental disabilities administration.

(10) "**Direct care worker**" means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes client care workers).

(11) "**Department**" or "**DSHS**" means the department of social and health services.

(12) "**Enhancement**" means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, online materials, and additional student activities.

(13) "**Expanded specialty training**" means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other

than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(14) **"Guardian"** means an individual as defined in chapter 11.88 RCW.

(15) **"Home care aide"** or **"certified home care aide"** means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

(16) **"Hybrid"** means a combination of online training and in-person, remote or virtual classroom instruction.

(17) **"Individual provider"** or **"IP"** means a person who has contracted with the department to provide personal care or respite care services to persons with functional disabilities under a medicaid state plan program, such as the medicaid personal care or community first choice programs or under a federal medicaid waiver program.

~~((17))~~ (18) **"Learning objectives"** means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

~~((18))~~ (19) **"Long-term care worker"** means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

~~((19))~~ (20) **"Online training"** means a course taken through an automated, asynchronous learning management system or other technology that conforms to the online training standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>.

(21) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living that are provided to the client.

(22) **"Remote skills training"** means training conducted in a virtual classroom environment, or online when a student either demonstrates a skill live or provides a video recorded file of themselves performing a skill that is forwarded for feedback to an approved instructor or a proctor trained by an approved instructor, or both. A

training program must be approved by DSHS to provide remote skills training.

~~((20) "Seventy-hour")) (23) "70-hour long-term care worker training"~~ means the ~~((seventy-hours))~~ 70 hours of required training that a new long-term care worker must complete within one hundred and twenty days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

~~((21))~~ (24) "Specialty training" means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

~~((22))~~ (25) "Training entity" means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum. Training entities may only deliver approved curriculum.

~~((23))~~ (26) "Training partnership" means a joint partnership or trust that includes the office of the governor, and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

(27) "Virtual classroom" means a synchronous, instructor-led, remote learning environment conducted in real time that conforms to the virtual classroom standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>. A training program must be approved by DSHS to provide virtual classroom instruction.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0836, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0836, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0870 What is the ~~((seventy-hour))~~ 70-hour long-term care worker basic training? (1) The ~~((seventy-hour))~~ 70-hour long-term care worker basic training is in addition to orientation and safety training. It is 70 hours and includes:

(a) The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely;

(b) Practice and demonstration of skills; and

(c) Population specific competencies.

(2) DSHS ~~((approved seventy-hour))~~ must approve the 70-hour long-term care worker basic training curricula.

(3) On-the-job training, as described in WAC 388-71-0932, may be applied to ~~((seventy-hour))~~ 70-hour long-term care worker basic training for an amount that must be approved by the department.

(4) The DSHS developed fundamentals of caregiving (FOC) or another department approved training may be used to teach core basic training but ~~((it))~~ the FOC must include enhancements. Additional student materials are required to ensure the enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026. Examples of enhancements include, but are not limited to:

(a) More time for workers to practice skills including:

(i) The mechanics of completing the skill correctly;

(ii) Client centered communication and problem solving associated with performing the skill;

(iii) The different levels of care required for each skill including independent, supervision, limited, extensive, and total;

(iv) Working with assistive devices associated with a skill.

(v) Helpful tips or best practices in working through common client challenges associated with a skill; and

(vi) Disease specific concerns or challenges associated with a skill.

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training;

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care; and

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials or activities that are one or more of the following:

(i) Are out of the scope of practice for a long-term care worker such as content clearly written for registered nurses;

(ii) Are identical to, or a direct replacement of, those already included in FOC;

(iii) ~~((Do not))~~ Fail to reinforce Washington state laws associated with client rights and client directed care;

(iv) Long-term care workers are not paid to provide; and

(v) Are written above a high school reading level.

(5) The delivery mode of the ~~((seventy-hour))~~ 70-hour long-term care worker basic training may be either in-person or virtual classroom instruction, or a hybrid of online and in-person ~~((modules))~~, remote or virtual classroom instruction. One hour of completed classroom instruction or other form of training (such as ~~((a video))~~ virtual classroom, remote or online course) equals one hour of training.

(a) Online and virtual classroom modules must be ~~((an instructor led class, such as a webinar, or an online))~~ interactive ~~((self-paced class that provides clear instructions on how students get questions answered during the course))~~, provide the student with access to the instructor, and ~~((adheres))~~ adhere to the DSHS online ~~((class))~~ and virtual classroom standards posted on DSHS's website <https://bit.ly/dshs-online-standards>.

(b) The in-person skills training or remote skills training portion of hybrid modules must be no less than ~~((twelve))~~ 16 hours of the total basic training hours and include in-person or remote instruction on the personal care ~~((assistance))~~ tasks supporting activities of daily living ~~((, commonly referred to as skills training))~~ as described in WAC 388-71-0911.

(6) The long-term care worker must be able to ask the instructor questions during the training ~~((entity must establish a way for the~~

~~long-term care worker to ask the instructor questions. An instructor or representative must be available within twenty-four hours during the business week).~~

(7) There is no challenge test for the 70-hour long-term care basic training.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0870, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0870, filed 12/20/12, effective 1/20/13.]

NEW SECTION

WAC 388-71-0873 What are the minimum requirements for training programs to provide remote skills training? (1) A training program offering remote skills training must meet the following minimum requirements:

- (a) Provide students with:
 - (i) The opportunity to practice, review, and receive coaching for every skill;
 - (ii) Virtual classroom demonstrations or videos of each skill;
 - (iii) Access to all supplies and materials required for practice;
 - (iv) Reasonable alternatives for skills when a live partner would not be safe or practical;
 - (v) Clearly outlined student performance guidelines for each skill that provide definitions for the levels of performance, such as:
 - (A) Excellent - Exceeds expectations;
 - (B) Satisfactory - Meets expectations;
 - (C) Developing - Approaching expectations;
 - (D) Potential for harm - Fails to meet expectations.
 - (vi) The opportunity to receive individualized feedback on every skill within seven business days unless other mutual arrangements are made;
 - (vii) The ability to receive instructional support through multiple formats such as by phone, chat, text, or email, or using the technology provided through a learning management system;
 - (viii) Equal access to knowledge acquisition through such methods as providing materials in multiple formats, allowing access through different devices, and providing learner-centered approaches for individual situations;
 - (ix) Accessible instructions for all technology skills required;
 - (x) Technical support for any technology that students need to access the training;
 - (xi) The ability to communicate with an instructor, peer mentor, or basic support team in real time to answer questions scheduled with varying hours to accommodate students who may work different shifts;
 - (xii) Downloadable and printable step-by-step guides for each skill taught.
- (b) Include scheduled, flexible opportunities for students to access support during which a student may ask questions and have skills demonstrated.

(c) Support knowledge acquisition of skills equitably using methods designed to accommodate the needs of diverse learning styles and the use of various devices; and

(d) Provide reasonable accommodations to students upon request.

(2) If a student fails to attain a satisfactory skill level for any skill through remote training, the training program will provide opportunities for remediation or additional practice for the skill.

(3) A training program must be approved by DSHS to provide remote skills training. Initial approval shall be provisional for one year during which a training program will be required to:

(a) Confer with DSHS training quality assurance staff no less than quarterly;

(b) Allow DSHS training quality assurance staff access to any materials, processes, training sessions, and documentation when requested; and

(c) Track student certificates of completion and monitor pass/fail data to the extent feasible for all students trained remotely and provide that data to DSHS when requested.

(4) Renewal of approval to provide remote skills training after the one-year provisional period shall be conditional upon a training program's:

(a) Adherence to the standards outlined in this section; and

(b) Satisfactory demonstration, to the extent feasible, that the training program's pass/fail rate for students trained remotely meets or exceeds the statewide average pass/rate for students trained in person.

(5) If data for renewal is insufficient to determine an accurate pass/fail rate, the department may renew provisional certification for an additional year.

[]

AMENDATORY SECTION (Amending WSR 21-04-057, filed 1/28/21, effective 2/28/21)

WAC 388-112A-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) **"Activities of daily living"** means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, medication assistance, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) **"Adult family home training network"** means a nonprofit organization established by the exclusive bargaining representative of adult family homes designated under RCW 41.56.026 with the capacity to provide training, workforce development, and other services to adult family homes.

(3) **"Applicant"** means:

(a) An individual who is applying for an adult family home license;

(b) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license; or

(c) An individual who is applying for an enhanced services facility license.

(4) "**Capable caregiving training**" means the DSHS developed training curricula in dementia and mental health that will be available in three class levels. The level one series of the class in both dementia and mental health meets the requirements under RCW 18.20.270 and 70.128.230 for specialty training. The level two and level three capable caregiving classes, when developed in both topics, may be completed for continuing education credits.

(5) "**Care team**" includes the resident and everyone involved in their care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the resident's well-being. However, the resident directs the service plan when able.

(6) "**Challenge test**" means a competency test taken for specialty training without first taking the class for which the test is designed.

(7) "**Competency**" means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

(8) "**Competency testing**" including challenge testing, evaluates a student to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.

(9) "**Core basic training**" is the portion of the (~~seventy~~) 70-hour long-term care worker basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(10) "**Date of hire**" for determining timeframes related to training and certification, means (~~the day an individual was first hired as a long-term care worker as determined by the department according to WAC 388-112A-0115~~) date of hire according to chapter 246-980 WAC.

(11) "**DDA**" means the developmental disabilities administration.

(12) "**Designee**" means a person in an assisted living facility or enhanced services facility who supervises long-term care workers and is designated by an assisted living facility administrator or enhanced services facility administrator to take the trainings in this chapter required of the facility administrator. An assisted living facility or enhanced services facility administrator may have more than one designee.

(13) "**Direct care worker**" means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes direct care workers).

(14) "**Direct supervision**" means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or has been exempted from the basic training requirements, and is on the premises and quickly available to the caregiver.

(15) "**DSHS**" or "**department**" means the department of social and health services.

(16) "**Enhancement**" means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course con-

tent and skills. Enhancements may include new student materials, videos or DVDs, online materials, and additional student activities.

(17) **"Entity representative"** means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

(18) **"Expanded specialty training"** means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(19) **"Guardian"** means an individual as defined in chapter 11.88 RCW.

(20) **"Home"** means adult family homes, enhanced services facilities, and assisted living facilities.

(21) **"Home care aide certified"** or **"home care aide"** means a person who obtained and maintains a home care aide certification through the department of health.

(22) **"Hybrid"** means a combination of online training and in-person, remote or virtual classroom instruction.

(23) **"Indirect supervision"** means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or was exempted from basic training requirements, and who is quickly and easily available to the long-term care worker, but not necessarily on-site.

~~((23))~~ (24) **"Learning objectives"** means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

~~((24))~~ (25) **"Long-term care worker"** means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

~~((25))~~ (26) **"Online training"** means a course taken through an automated, asynchronous learning management system or other technology that conforms to the online training standards posted on DSHS website at <https://bit.ly/dshs-online-standards>.

~~(27)~~ **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living, which is provided to meet the resident's care needs.

~~((26))~~ **(28) "Provider"** means any person or entity licensed by the department to operate an adult family home, enhanced services facility, or assisted living facility, or any person or entity certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

~~((27))~~ **(29) "Remote skills training"** means training conducted in a virtual classroom environment, or online when a student either demonstrates a skill live or provides a video recorded file of themselves performing a skill that is forwarded for feedback to an approved instructor or a proctor trained by an approved instructor, or both. A training program must be approved by DSHS to provide remote skills training.

(30) "Renewal period" means the certification renewal period as defined in WAC 246-12-010.

~~((28))~~ **(31) "Resident"** means a person residing and receiving long-term care services at an assisted living facility, enhanced services facility, or adult family home. As applicable, "resident" also means the resident's legal guardian or other surrogate decision maker.

~~((29))~~ **(32) "Resident manager"** means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

~~((30))~~ **(33) "Routine interaction"** means regular contact with residents.

~~((31) — "Seventy-hour")~~ **(34) "70-hour long-term care worker basic training"** means the ~~((seventy-hours))~~ 70-hours of required training that a new long-term care worker must complete within ~~((one hundred and twenty))~~ 120 days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

~~((32))~~ **(35) "Special needs"** means a resident has dementia consistent with WAC 388-78A-2510 for assisted living or WAC 388-76-10000 for adult family homes; mental illness consistent with WAC 388-78A-2500 for assisted living or WAC 388-76-10000 for adult family homes; or developmental disabilities consistent with WAC 388-78A-2490 for assisted living or WAC 388-76-10000 for adult family homes.

~~((33))~~ **(36) "Specialty training"** means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

~~((34))~~ **(37) "Training entity"** means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum.

(38) "Virtual classroom" means a synchronous, instructor-led, remote learning environment conducted in real time that conforms to the virtual classroom standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>. A training program must be approved by DSHS to provide virtual classroom instruction.

[Statutory Authority: RCW 74.08.090 and 70.128.060. WSR 21-04-057, § 388-112A-0010, filed 1/28/21, effective 2/28/21. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-0010, filed 6/30/20, effective 7/31/20. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0010, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0300 What is the (~~(seventy-hour)~~) 70-hour long-term care worker basic training? (1) The (~~(seventy-hour)~~) 70-hour long-term care worker basic training is in addition to orientation and safety training. It is (~~(seventy)~~) 70 hours and includes:

(a) The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely;

(b) Practice and demonstration of skills; and

(c) Population specific competencies.

(2) DSHS must approve the (~~(seventy-hour)~~) 70-hour long-term care worker basic training curricula.

(3) On-the-job training may be applied to the (~~(seventy-hour)~~) core competencies of 70-hour long-term care worker basic training for an amount that must be approved by the department;

(4) The DSHS developed (~~(revised)~~) fundamentals of caregiving (~~(RFOC)~~) (FOC) or another department approved training may be used to teach the (~~(seventy-hour)~~) core competencies of the 70-hour long-term care worker basic training but (~~(it)~~) the FOC must include enhancements. Additional student materials are required to ensure the enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-112A-1020. Examples of enhancements include, but are not limited to:

(a) More time for workers to practice skills including:

(i) The mechanics of completing the skill correctly;

(ii) Resident centered communication and problem solving associated with performing the skill;

(iii) The different levels of care required for each skill including independent, supervision, limited, extensive, and total;

(iv) Working with assistive devices associated with a skill;

(v) Helpful tips or best practices in working through common resident challenges associated with a skill; and

(vi) Disease specific concerns or challenges associated with a skill.

(b) Augmenting or adding additional materials, student activities, videos, or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training;

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care; and

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are not materials or activities that are one or more of the following:

(i) Are out of the scope of practice for a long-term care worker such as content clearly written for registered nurses;

(ii) Are identical to, or a direct replacement of, those already included in the ((RFOC)) FOC;

(iii) Fail to reinforce Washington state laws associated with resident rights and resident directed care;

(iv) Long-term care workers are not paid to provide;

(v) Are written above a high school reading level.

(5) The delivery mode of the ((~~seventy-hour~~)) 70-hour long-term care worker basic training may be either in-person or virtual classroom instruction, or a hybrid of online and in-person ((~~modules~~)), remote or virtual classroom instruction. One hour of completed classroom instruction or other form of training (such as a ((~~video~~)) virtual classroom, remote or online course) equals one hour of training.

(a) Online and virtual classroom modules must be ((~~an instructor led class, such as a webinar or an~~)) interactive ((~~online class that provides~~)), provide the student with access to the instructor, and ((~~adheres~~)) adhere to the DSHS online ((~~class~~)) and virtual classroom standards posted on DSHS's website at <https://bit.ly/dshs-online-standards>.

(b) The in-person skills training or remote skills training portion of hybrid modules must be no less than ((~~twelve~~)) 16 hours of the total basic training hours and include in-person or remote instruction on the personal care ((~~assistance~~)) tasks supporting activities of daily living, ((~~commonly referred to as skills training~~)) as described in WAC 388-112A-0320.

(6) The long-term care worker must be able to ask the instructor questions during the training.

(7) There is no challenge test for the ((~~seventy-hour~~)) 70-hour long-term care worker basic training.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0300, filed 10/24/17, effective 11/24/17.]

NEW SECTION

WAC 388-112A-0305 What are the minimum requirements for training programs to provide remote skills training? (1) A training program offering remote skills training must meet the following minimum requirements:

(a) Provide students with:

(i) The opportunity to practice, review, and receive coaching for every skill;

(ii) Virtual classroom demonstrations or videos of each skill;

(iii) Access to all supplies and materials required for practice;

(iv) Reasonable alternatives for skills when a live partner would not be safe or practical;

(v) Clearly outlined student performance guidelines for each skill that provide definitions for the levels of performance, such as:

(A) Excellent - Exceeds expectations;

(B) Satisfactory - Meets expectations;

(C) Developing - Approaching expectations;

(D) Potential for harm - Fails to meet expectations.

(vi) The opportunity to receive individualized feedback on every skill within seven business days unless other mutual arrangements are made;

(vii) The ability to receive instructional support through multiple formats such as by phone, chat, text, or email, or using the technology provided through a learning management system;

(viii) Equal access to knowledge acquisition through such methods as providing materials in multiple formats, allowing access through different devices, and providing learner-centered approaches for individual situations;

(ix) Accessible instructions for all technology skills required;

(x) Technical support for any technology that students need to access the training;

(xi) The ability to communicate with an instructor, peer mentor, or basic support team in real time to answer questions scheduled with varying hours to accommodate students who may work different shifts;

(xii) Downloadable and printable step-by-step guides for each skill taught.

(b) Include scheduled, flexible opportunities for students to access support during which a student may ask questions and have skills demonstrated.

(c) Support knowledge acquisition of skills equitably using methods designed to accommodate the needs of diverse learning styles and the use of various devices; and

(d) Provide reasonable accommodations to students upon request.

(2) If a student fails to attain a satisfactory skill level for any skill through remote training, the training program will provide opportunities for remediation or additional practice for the skill.

(3) A training program must be approved by DSHS to provide remote skills training. Initial approval shall be provisional for one year during which a training program will be required to:

(a) Confer with DSHS training quality assurance staff no less than quarterly;

(b) Allow DSHS training quality assurance staff access to any materials, processes, training sessions, and documentation when requested; and

(c) Track student certificates of completion and monitor pass/fail data to the extent feasible for all students trained remotely and provide that data to DSHS when requested.

(4) Renewal of approval to provide remote skills training after the one-year provisional period shall be conditional upon a training program's:

(a) Adherence to the standards outlined in this section; and

(b) Satisfactory demonstration, to the extent feasible, that the training program's pass/fail rate for students trained remotely meets or exceeds the statewide average pass/rate for students trained in person.

(5) If data for renewal is insufficient to determine an accurate pass/fail rate, the department may renew provisional certification for an additional year.

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WSR 22-05-042
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-16—Filed February 8, 2022, 1:42 p.m.]

Supplemental Notice to WSR 21-20-108.

Preproposal statement of inquiry was filed as WSR 21-14-094.

Title of Rule and Other Identifying Information: Implementation of E2SHB 1477 and consolidated health care rule making.

Hearing Location(s): On Thursday, March 24, 2022, at 10:00 a.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/implementation-e2shb-1477-and-consolidated-health-care-rulemaking-r-2021-16>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: March 25, 2022.

Submit Written Comments to: Shari Maier, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by March 24, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7011, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by March 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner is adopting rules to implement E2SHB 1477 concerning access to next day appointments required in the legislation. This rule is also being used to consolidate rule making to ensure that rules related to recently enacted legislation that also amend WAC 284-170-280 are adopted by OIC. These rules will facilitate implementation of recent laws by ensuring that all affected health care entities understand their rights and obligations.

Reasons Supporting Proposal: The rule is amending WAC 284-170-280 to be consistent with changes in legislative requirements, to adopt reporting requirements regarding access to the next day services to ensure that enrollees are receiving these vital services for the prevention of suicide, and to address network access plan standards specific to gender affirming treatment.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.515, 48.44.050, 48.46.200; chapter 302, Laws of 2021, and chapter 280, Laws of 2021.

Statute Being Implemented: RCW 48.43.790 and 48.43.0128.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Shari Maier, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7173; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington Administrative Procedure Act (APA)¹ requires that "significant legislative rules" be evaluated to determine if the probable benefits of a proposed rule making exceed its probable costs. Considering both quantitative and qualitative information and analysis². A draft

of this determination must be available at the time the filing for the rule's preproposal or CR-102. The final version of this document must be completed prior to final rule adoption and included in the rule-making file.

- ¹ Chapter 34.05 RCW.
² RCW 34.05.328 (1)(c).

Determination of exemption: OIC has determined that, under RCW 34.05.328 (5)(b)(iii), this rule will adopt or incorporate one or more of the following without change; federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or items as referenced by Washington state law, national consensus codes that generally establish industry standards. The material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Rationale: E2SHB 1477 was signed into law during 2021. Among various requirements assigned to other agencies, such as implementing the national 988 suicide prevention hotline in Washington, the bill also adds a section to Title 48 RCW that requires carriers to ensure that enrollees experiencing urgent, symptomatic behavioral health conditions have access to next day appointments. Additionally, we are utilizing this rule making as a consolidated rule making to ensure that rules related to recently enacted legislation are adopted by OIC. The rule is amending WAC 284-170-280 to be consistent with these requirements and to adopt reporting requirements regarding access to the next day services to ensure that enrollees are receiving these vital services for the prevention of suicide.

Determination: OIC determines that this rule is exempt from cost-benefit analysis requirements.

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: Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry ..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements... To determine whether the proposed rule will have a disproportionate cost impact on small businesses."

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under:

RCW 19.85.025(4) - the businesses that must comply with the proposed rule are not small businesses, under chapter 19.85 RCW. This rule only impacts large insurance carriers which are not classified as small business as defined by RCW 19.85.020(2). While calculating, we have applied a default cost of compliance of \$1,000, as it is indeterminate at this time. OIC has directly heard from stakeholders regarding questions and issues related to implementation and have revised internal processes to respond to some of these issues. OIC has determined that the compliance with the proposed rule does not put any disproportionate impact on small businesses or government agencies.

Please see below:

2019 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Average number of Employees/Business	Minor Cost Estimate - 0.003% of Avg. Annual Receipts
524114	\$1,000	Direct Health and Medical Insurance Carriers	Finance and insurance	742 (Not small business)	\$3,503,165

Source: United States Census Bureau (2017). Retrieved October 24, 2021, from census.gov.

February 8, 2022
Mike Kreidler
Insurance Commissioner

OTS-3359.2

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-170-280 Network reports—Format. (1) An issuer must submit its provider network materials to the commissioner for approval prior to or at the time it files a newly offered health plan.

(a) For individual and small groups, the submission must occur when the issuer submits its plan under WAC 284-43-0200. For groups other than individual and small, the submission must occur when the issuer submits a new health plan and as required in this section.

(b) The commissioner may extend the time for filing for good cause shown.

(c) For plan year 2015 only, the commissioner will permit a safe harbor standard. An issuer who can not meet the submission requirements in ~~((e) and (f) of this)~~ subsection (3)(f) and (g) of this subsection will be determined to meet the requirements of those subsections even if the submissions are incomplete, provided that the issuer:

(i) Identifies specifically each map required under subsection ~~(3)((e))~~ (f) (i) of this section, or Access Plan component required under subsection ~~(3)((f))~~ (g) of this section, which has not been included in whole or part;

(ii) Explains the specific reason each map or component has not been included; and

(iii) Sets forth the issuer's plan to complete the submission, including the date(s) by which each incomplete map and component will be completed and submitted.

(2) Unless indicated otherwise, the issuer's reports must be submitted electronically and completed consistent with the posted submission instructions on the commissioner's website, using the required formats.

(3) For plan years beginning January 1, 2015, an issuer must submit the following specific documents and data to the commissioner to document network access:

(a) **Provider Network Form A.** An issuer must submit a report of all participating providers by network.

(i) The Provider Network Form A must be submitted for each network being reviewed for network access. A network may be used by more than one plan.

(ii) An issuer must indicate whether a provider is an essential community provider as instructed in the commissioner's Provider Network Form A instructions.

(iii) An issuer must submit an updated, accurate Provider Network Form A on a monthly basis by the 5th of each month for each network and when a material change in the network occurs as described in subchapter B.

(iv) Filing of this data satisfies the reporting requirements of RCW 48.44.080 and the requirements of RCW 48.46.030 relating to filing of notices that describe changes in the provider network.

(b) **Provider directory certification.** An issuer must submit at the time of each Provider Network Form A submission a certification that the provider directory posted on the issuer's website is specific to each plan, accurate as of the last date of the prior month. A certification signed by an officer of the issuer must confirm that the provider directory contains only providers and facilities with which the issuer has a signed contract that is in effect on the date of the certification.

(c) **988 Crisis Hotline Appointment Form D report.** For health plans issued or renewed on or after January 1, 2023, issuers must make next day appointments available to enrollees experiencing urgent, symptomatic behavioral health conditions to receive covered behavioral health services. Beginning on January 7, 2023, issuers must submit a report that will document their health plans' compliance with next day appointment access, including a count of enrollee appointments available for urgent, symptomatic behavioral health care services.

(i) The report is due on the dates published on the office of the insurance commissioner's website and will be set each calendar year. The office of the insurance commissioner will publish the first reporting date by December 1, 2022, and by each December 1st thereafter. The reporting time frame will be no more frequent than weekly and no less often than twice yearly.

(ii) The report must contain all data items shown in and conform to the format of the 988 Crisis Hotline Appointment Form D report prescribed by and available from the commissioner.

(iii) The report must reflect information from any sources available at the time the reporting is completed including, but not limited to:

(A) All requests the issuer has received from any source including, but not limited to, an enrollee, their provider, or a crisis call center hub;

(B) The issuer's claims data; and

(C) The behavioral health crisis call center system platform and the behavioral health integrated client referral system, once those are established and providing real-time information relevant to the coordination of behavioral health crisis response and suicide prevention services, as provided in chapter 71.24 RCW, and that information is accessible to the issuer.

(iv) For purposes of this report, urgent symptomatic behavioral health condition has the same meaning as described in RCW 48.43.790 or as established by the National Suicide Hotline Designation Act of 2020 and federal communications rules adopted July 16, 2020.

(d) **Network Enrollment Form B.** The Network Enrollment Form B report provides the commissioner with an issuer's count of total covered

lives for the prior year, during each month of the year, for each health plan by county.

(i) The report must be submitted for each network as a separate report. The report must contain all data items shown in and conform to the format of Network Enrollment Form B prescribed by and available from the commissioner.

(ii) An issuer must submit this report by March 31st of each year.

~~((d))~~ **(e) Alternate Access Delivery Request Form C.** For plan years that begin on or after January 1, 2015, alternate access delivery requests must be submitted when an issuer's network meets one or more of the criteria in WAC 284-170-200 (15)(a) through (d). Alternate access delivery requests must be submitted to the commissioner using the Alternate Access Delivery Request Form C.

(i) The Alternate Access Delivery Request Form C submission must address the following areas, and may include other additional information as requested by the commissioner:

(A) A description of the specific issues the alternate access delivery system is intended to address, accompanied by supporting data describing how the alternate access delivery system ensures that enrollees have reasonable access to sufficient providers and facilities, by number and type, for covered services;

(B) A description and schedule of cost-sharing requirements for providers that fall under the alternate access delivery system;

(C) The issuer's proposed method of noting on its provider directory how an enrollee can access provider types under the alternate access delivery system;

(D) The issuer's marketing plan to accommodate the time period that the alternate access delivery system is in effect, and specifically describe how it impacts current and future enrollment and for what period of time;

(ii) Provider Network Form A and Network Enrollment Form B submissions are required in relation to an alternate access delivery system on the basis described in subsections (1) and (2) of this section.

(iii) If a network becomes unable to meet the network access standards after approval but prior to the health product's effective date, an alternate access delivery request must include a timeline to bring the network into full compliance with this subchapter.

~~((e))~~ **(f) Geographic Network Reports.**

(i) The geographic mapping criteria outlined below are minimum requirements and will be considered in conjunction with the standards set forth in WAC 284-170-200 and 284-170-310. One map for each of the following provider types must be submitted:

(A) Hospital and emergency services. Map must identify provider locations, and demonstrate that each enrollee in the service area has access within thirty minutes in an urban area and sixty minutes in a rural area from either their residence or workplace to general hospital facilities including emergency services.

(B) Primary care providers. Map must demonstrate that eighty percent of the enrollees in the service area have access within thirty miles in an urban area and sixty miles in a rural area from either their residence or workplace to a primary care provider with an open practice. The provider type selected must have a license under Title 18 RCW that includes primary care services in the scope of license.

(C) Mental health and substance use disorder providers. For general mental health providers, such as licensed psychiatrists, psychologists, social workers, and mental health nurse practitioners, the map

must demonstrate that eighty percent of the enrollees in the service area have access to a mental health provider within thirty miles in an urban area and sixty miles in a rural area from either their residence or workplace. For specialty mental health providers and substance use disorder providers, the map must demonstrate that eighty percent of the enrollees have access to the following types of service provider or facility: Evaluation and treatment, voluntary and involuntary inpatient mental health and substance use disorder treatment, outpatient mental health and substance use disorder treatment, and behavioral therapy. If one of the types of specialty providers is not available as required above, the issuer must propose an alternate access delivery system to meet this requirement.

(D) Pediatric services. For general pediatric services, the map must demonstrate that eighty percent of the covered children in the service area have access to a pediatrician or other provider whose license under Title 18 RCW includes pediatric services in the scope of license. This access must be within thirty miles in an urban area and sixty miles in a rural area of their family or placement residence. For specialty pediatric services, the map must demonstrate that eighty percent of covered children in the service area have access to pediatric specialty care within sixty miles in an urban area and ninety miles in a rural area of their family or placement residence. The pediatric specialty types include, but are not limited to, nephrology, pulmonology, rheumatology, hematology-oncology, perinatal medicine, neurodevelopmental disabilities, cardiology, endocrinology, and gastroenterology.

(E) Specialty services. An issuer must provide one map for the service area for specialties found on the American Board of Medical Specialties list of approved medical specialty boards. The map must demonstrate that eighty percent of the enrollees in the service area have access to an adequate number of providers and facilities in each specialty. Subspecialties are subsumed on the map.

(F) Therapy services. An issuer must provide one map that demonstrates that eighty percent of the enrollees have access to the following types of providers within thirty miles in an urban area and sixty miles in a rural area of their residence or workplace: Chiropractor, rehabilitative service providers and habilitative service providers.

(G) Home health, hospice, vision, and dental providers. An issuer must provide one map that identifies each provider or facility to which an enrollee has access in the service area for home health care, hospice, vision, and pediatric oral coverage, including allied dental professionals, dental therapists, dentists, and orthodontists.

(H) Covered pharmacy dispensing services. An issuer must provide one map that demonstrates the geographic distribution of the pharmacy dispensing services within the service area. If a pharmacy benefit manager is used by the issuer, the issuer must establish that the specifically contracted pharmacy locations within the service area are available to enrollees through the pharmacy benefit manager.

(I) Essential community providers. An issuer must provide one map that demonstrates the geographic distribution of essential community providers, by type of provider or facility, within the service area. This requirement applies only to qualified health plans as certified in RCW 43.71.065.

(ii) Each report must include the provider data points on each map, title the map as to the provider type or facility type it repre-

sents, include the network identification number the map applies to, and the name of each county included on the report.

(iii) For plan years beginning January 1, 2015, and every year thereafter, an issuer must submit reports as required in subsection (1) of this section to the commissioner for review and approval, or when an alternate access delivery request is submitted.

~~((f))~~ (g) Access Plan. An issuer must establish an access plan specific to each product that describes the issuer's strategy, policies, and procedures necessary to establishing, maintaining, and administering an adequate network.

(i) At a minimum, the issuer's policies and procedures referenced in the access plan must address:

(A) Referral of enrollees out-of-network, including criteria for determining when an out-of-network referral is required or appropriate;

(B) Copayment and coinsurance determination standards for enrollees accessing care out-of-network;

(C) Standards of accessibility expressed in terms of objectives and minimum levels below which corrective action will be taken, including the proximity of specialists and hospitals to primary care sources, and a method and process for documentation confirming that access will not result in delay detrimental to health of enrollees;

(D) Monitoring policies and procedures for compliance, including tracking and documenting network capacity and availability;

(E) Standard hours of operation, and after-hours, for prior authorization, consumer and provider assistance, and claims adjudication;

(F) Triage and screening arrangements for prior authorization requests;

(G) Prior authorization processes that enrollees must follow, including the responsibilities and scope of use of nonlicensed staff to handle enrollee calls about prior authorization;

(H) Specific procedures and materials used to address the needs of enrollees with limited-English proficiency and literacy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(I) Assessment of the health status of the population of enrollees or prospective enrollees, including incorporation of the findings of local public health community assessments, and standardized outcome measures, and use of the assessment data and findings to develop network or networks in the service area;

(J) For gender affirming treatment:

(I) Standards of accessibility expressed in terms of objectives and minimum levels below which corrective action will be taken, including the proximity of gender affirming treatment services to primary care sources, and a method and process for documentation confirming that access will not result in delay detrimental to health of enrollees; and

(II) Monitoring policies and procedures for compliance, including tracking and documenting network capacity and availability;

(K) Notification to enrollees regarding personal health information privacy rights and restrictions, termination of a provider from the network, and maintaining continuity of care for enrollees when there is a material change in the provider network, insolvency of the issuer, or other cessation of operations;

~~((K))~~ (L) Issuer's process for corrective action for providers related to the provider's licensure, prior authorization, referral and

access compliance. The process must include remedies to address insufficient access to appointments or services; and

(M) The process for ensuring access to next day appointments for urgent, symptomatic behavioral health conditions.

(ii) An access plan applicable to each product must be submitted with every Geographic Network Report when the issuer seeks initial certification of the network, submits its annual rate filing to the commissioner for review and approval, or when an alternative access delivery request is required due to a material change in the network.

(iii) The current access plan, with all associated data sets, policies and procedures, must be made available to the commissioner upon request, and a summary of the access plan's associated procedures must be made available to the public upon request.

(4) For purposes of this section, "urban area" means:

(a) A county with a density of ninety persons per square mile; or

(b) An area within a twenty-five mile radius around an incorporated city with a population of more than thirty thousand.

[Statutory Authority: RCW 48.02.060, WSR 16-14-106 (Matter No. R 2016-11), § 284-170-280, filed 7/6/16, effective 8/6/16; WSR 16-07-144 (Matter No. R 2016-01), recodified as § 284-170-280, filed 3/23/16, effective 4/23/16. WSR 16-01-081, recodified as § 284-43-9976, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.460, 48.43.505, 48.43.510, 48.43.515, 48.43.530, 48.43.535, 48.44.050, 48.46.200, 48.20.450, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. §§ 156.230, 156.235, and 156.245. WSR 14-10-017 (Matter No. R 2013-22), § 284-43-220, filed 4/25/14, effective 5/26/14. Statutory Authority: RCW 48.02.060, 48.43.510 and 48.43.515. WSR 11-07-015 (Matter No. R 2011-01), § 284-43-220, filed 3/8/11, effective 4/8/11. Statutory Authority: RCW 48.02.060. WSR 08-17-037 (Matter No. R 2008-17), § 284-43-220, filed 8/13/08, effective 9/13/08. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.43.515, 48.44.050, 48.46.030, 48.46.200, 48.42.100, 48.43.515, 48.46.030. WSR 03-09-142 (Matter No. R 2003-01), § 284-43-220, filed 4/23/03, effective 5/24/03. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.46.030, 48.46.200. WSR 00-04-034 (Matter No. R 99-2), § 284-43-220, filed 1/24/00, effective 1/1/01. Statutory Authority: RCW 48.02.060, 48.20.450, 48.20.460, 48.30.010, 48.44.020, 48.44.050, 48.44.080, 48.46.030, 48.46.060(2), 48.46.200 and 48.46.243. WSR 98-04-005 (Matter No. R 97-3), § 284-43-220, filed 1/22/98, effective 2/22/98.]

WSR 22-05-055

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed February 10, 2022, 6:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-060.

Title of Rule and Other Identifying Information: WAC 182-538-050 Definitions, WAC 182-538-130 Exemptions and ending enrollment in managed care.

Hearing Location(s): On March 22, 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_gEBGwLk6Qxqjm9TlhCYM8A. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than March 23, 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 March 22, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by March 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to permit children with special health care needs to request an exemption from, or an end to enrollment in, managed care. The agency is making this amendment to align the rule with the medicaid state plan and federal regulation (42 C.F.R. 438.50 (d)(3)).

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: Greg Sandoz, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1624.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or

regulation and description of the consequences to the state if the rule is not adopted: 42 C.F.R. 438.50 (d)(3). The state could lose federal medicaid funding if the state is not in compliance with federal regulations governing the medicaid program.

February 10, 2022
Wendy Barcus
Rules Coordinator

OTS-3554.1

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-050 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Administrative hearing" means an evidentiary adjudicative proceeding before an administrative law judge or presiding officer that is available to an enrollee under chapter 182-526 WAC according to RCW 74.09.741.

"Adverse benefit determination" means one or more of the following:

- (a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;
- (b) The reduction, suspension, or termination of a previously authorized service;
- (c) The denial, in whole or in part, of payment for a service;
- (d) The failure to provide services in a timely manner, as defined by the state;
- (e) The failure of a managed care organization (MCO) to act within the time frames provided in 42 C.F.R. Sec. 438.408 (a), (b)(1) and (2) for standard resolution of grievances and appeals; or
- (f) For a resident of a rural area with only one MCO, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside the network under 42 C.F.R. Sec. 438.52 (b)(2)(ii).

"Agency" - See WAC 182-500-0010.

"Appeal" means a review by an MCO of an adverse benefit determination.

"Apple health foster care (AHFC)" means the managed care program developed by the agency and the department of social and health services to serve children and youth in foster care and adoption support and young adult alumni of the foster care program.

"Assign" or **"assignment"** means the agency selects an MCO to serve a client who has not selected an MCO.

"Auto enrollment" means the agency has automatically enrolled a client into an MCO in the client's area of residence.

"Behavioral health" - See WAC 182-538D-0200.

"Behavioral health administrative service organization (BH-ASO)" means an entity selected by the medicaid agency to administer behavio-

ral health services and programs, including crisis services for all people in an integrated managed care regional service area. The BH-ASO administers crisis services for all people in its defined regional service area, regardless of a person's ability to pay.

"Behavioral health services only (BHSO)" means the program in which enrollees only receive behavioral health benefits through a managed care delivery system.

"Child or youth with special health care needs" means a client under age 19 who is:

(a) Eligible for supplemental security income under Title XVI of the Social Security Act;

(b) Eligible for medicaid under section 1902 (e)(3) of the Social Security Act;

(c) In foster care or other out-of-home placement;

(d) Receiving foster care or adoption assistance; or

(e) Receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501 (a)(1)(D) of Title V of the Social Security Act.

"Client" - See WAC 182-500-0020.

"Disenrollment" - See "end enrollment."

"Emergency medical condition" means a condition meeting the definition in 42 C.F.R. Sec. 438.114(a).

"Emergency services" means services defined in 42 C.F.R. Sec. 438.114(a).

"End enrollment" means ending the enrollment of an enrollee for one of the reasons outlined in WAC 182-538-130.

"Enrollee" means a person eligible for any Washington apple health program enrolled in managed care with an MCO or PCCM provider that has a contract with the state.

"Enrollee's representative" means a person with a legal right or written authorization from the enrollee to act on behalf of the enrollee in making decisions.

"Enrollees with special health care needs" means enrollees having chronic and disabling conditions and the conditions:

(a) Have a biologic, psychologic, or cognitive basis;

(b) Have lasted or are virtually certain to last for at least one year; and

(c) Produce one or more of the following conditions stemming from a disease:

(i) Significant limitation in areas of physical, cognitive, or emotional function;

(ii) Dependency on medical or assistive devices to minimize limitation of function or activities; or

(iii) In addition, for children, any of the following:

(A) Significant limitation in social growth or developmental function;

(B) Need for psychological, educational, medical, or related services over and above the usual for the child's age; or

(C) Special ongoing treatments, such as medications, special diet, interventions, or accommodations at home or school.

"Exemption" means agency approval of a client's preenrollment request to remain in the fee-for-service delivery system for one of the reasons outlined in WAC 182-538-130.

"Fully integrated managed care (FIMC)" - See integrated managed care.

"Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination.

"Grievance and appeal system" means the processes the MCO implements to handle appeals of adverse benefit determinations and grievances, as well as the processes to collect and track information about them.

"Health care service" or **"service"** means a service or item provided for the prevention, cure, or treatment of an illness, injury, disease, or condition.

"Integrated managed care (IMC)" means the program under which a managed care organization provides:

(a) Physical health services funded by medicaid; and

(b) Behavioral health services funded by medicaid, and other available resources provided for in chapters 182-538B, 182-538C, and 182-538D WAC.

"Managed care" means a comprehensive health care delivery system that includes preventive, primary, specialty, and ancillary services. These services are provided through either an MCO or PCCM provider.

"Managed care contract" means the agreement between the agency and an MCO to provide prepaid contracted services to enrollees.

"Managed care organization" or **"MCO"** means an organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with the agency under a comprehensive risk contract to provide prepaid health care services to enrollees under the agency's managed care programs.

"Mandatory enrollment" means the agency's requirement that a client enroll in managed care.

"Mandatory service area" means a service area in which eligible clients are required to enroll in an MCO.

"Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity acting within their scope of practice and licensure that:

(a) Provides health care services to enrollees; and

(b) Does not have a written agreement with the managed care organization (MCO) to participate in the MCO's provider network.

"Participating provider" means a person, health care provider, practitioner, or entity acting within their scope of practice and licensure with a written agreement with the MCO to provide services to enrollees.

"Patient days of care" means all voluntary patients and involuntarily committed patients under chapter 71.05 RCW, regardless of where in the state hospital the patients reside. Patients who are committed to the state hospital under chapter 10.77 RCW are not included in the patient days of care. Patients who are committed under RCW 10.77.088 by municipal or district courts after failed competency restoration and dismissal of misdemeanor charges are not counted in the patient days of care until a petition for ((ninety)) 90 days of civil commitment under chapter 71.05 RCW has been filed in court. Patients who are committed under RCW 10.77.086 by a superior court after failed competency restoration and dismissal of felony charges are not counted in the patient days of care until the patient is civilly committed under chapter 71.05 RCW.

"Primary care case management" or **"PCCM"** means the health care management activities of a provider that contracts with the agency to provide primary health care services and to arrange and coordinate other preventive, specialty, and ancillary health services.

"Primary care provider" or **"PCP"** means a person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), naturopath, or a

physician assistant who supervises, coordinates, and provides health services to a client or an enrollee, initiates referrals for specialist and ancillary care, and maintains the client's or enrollee's continuity of care.

"Regional service area (RSA)" means a single county or multi-county grouping formed for the purpose of health care purchasing and designated by the agency and the department of social and health services.

"Timely" concerning the provision of services, means an enrollee has the right to receive medically necessary health care as expeditiously as the enrollee's health condition requires. Concerning authorization of services and grievances and appeals, "timely" means according to the agency's managed care program contracts and the time frames stated in this chapter.

"Wraparound with intensive services (WISE)" is a program that provides comprehensive behavioral health services and support to:

- (a) Medicaid-eligible people age (~~twenty~~) 20 or younger with complex behavioral health needs; and
- (b) Their families.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538-050, filed 11/27/19, effective 1/1/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Parts 431, 433, 438, 440, 457, and 495. WSR 17-23-199, § 182-538-050, filed 11/22/17, effective 12/23/17. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-24-098, § 182-538-050, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 41.05.021, 42 C.F.R. 438. WSR 13-02-010, § 182-538-050, filed 12/19/12, effective 2/1/13. WSR 11-14-075, recodified as § 182-538-050, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 08-15-110, § 388-538-050, filed 7/18/08, effective 8/18/08; WSR 06-03-081, § 388-538-050, filed 1/12/06, effective 2/12/06. Statutory Authority: RCW 74.08.090, 74.09.522, 2003 E1 c 25 § 201(4), 2004 c 276 § 201(4), 42 U.S.C. 1396N (section 1915 (b) and (c) of the Social Security Act of 1924). WSR 05-01-066, § 388-538-050, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.522. WSR 03-18-109, § 388-538-050, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. WSR 02-01-075, § 388-538-050, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. WSR 00-04-080, § 388-538-050, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. WSR 95-18-046 (Order 3886), § 388-538-050, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. WSR 93-17-039 (Order 3621), § 388-538-050, filed 8/11/93, effective 9/11/93.]

OTS-3555.1

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-130 Exemptions and ending enrollment in managed care. The medicaid agency enrolls clients into integrated managed care (IMC) based on the rules in WAC 182-538-060. IMC is mandatory in all regional service areas.

(1) **Authority to request.** The following people may request that the agency approve an exemption or end enrollment in managed care:

- (a) A client or enrollee;
- (b) A client or enrollee's authorized representative under WAC 182-503-0130; or
- (c) A client or enrollee's representative as defined in RCW 7.70.065.

(2) **Standards to exempt or end enrollment.**

(a) The agency exempts or ends enrollment from mandatory managed care when any of the following apply:

- (i) The client or enrollee is eligible for medicare;
- (ii) The client or enrollee is not eligible for managed care enrollment, for Washington apple health programs, or both.
- (b) The agency grants a request to exempt or to end enrollment in managed care, with the change effective the earliest possible date given the requirements of the agency's enrollment system, when the client or enrollee:

- (i) Is American Indian or Alaska native or is a descendant of an AI/AN client and requests not to be in managed care;
- (ii) Lives in an area or is enrolled in a Washington apple health program in which participation in managed care is voluntary; ((~~or~~))
- (iii) Requires care that meets the criteria in subsection (3) of this section for case-by-case clinical exemptions or to end enrollment; or
- (iv) Is a child or youth with special health care needs as defined in WAC 182-538-050.

(3) **Case-by-case clinical criteria.** Clinical criteria for an enrollee or client to be exempted or end enrollment in IMC.

(a) The agency may approve a request for exemption or to end enrollment when the following criteria are met:

- (i) The care must be medically necessary;
- (ii) The medically necessary care at issue is covered under the agency's managed care contracts and is not a benefit under the behavioral health services only (BHSO) program;
- (iii) The client is receiving the medically necessary care at issue from an established provider or providers who are not available through any contracted MCO; and
- (iv) It is medically necessary to continue that care from the established provider or providers.

(b) If a client requests exemption prior to enrollment, the client is not enrolled until the agency approves or denies the request.

(c) If an enrollee request to end enrollment is received after the enrollment effective date, the enrollee remains enrolled pending the agency's decision.

(4) **Approved request.**

(a) When the agency approves a request for exemption or to end enrollment, the agency will notify the client or enrollee of its decision by telephone or in writing.

(b) For clients who are not AI/AN, the following rules apply:

(i) If the agency approves the request for a limited time, the client or enrollee is notified of the time limitation and the process for renewing the exemption.

(ii) The agency limits the period of time based on the circumstances or how long the conditions described are expected to exist.

(iii) The agency may periodically review those circumstances or conditions to determine if they continue to exist.

(iv) Any authorized exemption will continue only until the client can be enrolled in managed care.

(5) **BHSO.**

(a) When a client is exempt from mandatory IMC or their enrollment in the mandatory IMC program ends, the exemption is for the physical health benefit only. The client remains enrolled in behavioral health services only (BHSO) for the behavioral health benefit.

(b) AI/AN clients are an exception in that they can choose to receive their behavioral health benefit on a fee-for-service basis.

(6) **Denied request.** When the agency denies a request for exemption or to end enrollment:

(a) The agency will notify the client or enrollee of its decision by telephone or in writing and confirms a telephone notification in writing.

(b) When a client or enrollee is limited-English proficient, the written notice must be available in the client's or enrollee's primary language under 42 C.F.R. 438.10.

(c) The written notice must contain all the following information:

(i) The agency's decision;

(ii) The reason for the decision;

(iii) The specific rule or regulation supporting the decision;

and

(iv) The right to request an agency administrative hearing.

(7) **Administrative hearing request.** If a client or enrollee does not agree with the agency's decision regarding a request for exemption or to end enrollment, the client or enrollee may file a request for an agency administrative hearing based on RCW 74.09.741, the rules in this chapter, and the agency hearing rules in chapter 182-526 WAC.

(8) **MCO request.** The agency will grant a request from an MCO to end enrollment of an enrollee when the request is submitted to the agency in writing and includes sufficient documentation for the agency to determine that the criteria to end enrollment in this subsection is met.

(a) All of the following criteria must be met to end enrollment:

(i) The enrollee puts the safety or property of the contractor or the contractor's staff, providers, patients, or visitors at risk and the enrollee's conduct presents the threat of imminent harm to others, except for enrollees described in (c) of this subsection;

(ii) A clinically appropriate evaluation was conducted to determine whether there was a treatable problem contributing to the enrollee's behavior and there was not a treatable problem or the enrollee refused to participate;

(iii) The enrollee's health care needs have been coordinated as contractually required and the safety concerns cannot be addressed; and

(iv) The enrollee has received written notice from the MCO of its intent to request to end enrollment of the enrollee, unless the requirement for notification has been waived by the agency because the enrollee's conduct presents the threat of imminent harm to others. The

MCO's notice to the enrollee includes the enrollee's right to use the MCO's grievance process to review the request to end enrollment.

(b) The agency will not approve a request to end enrollment when the request is solely due to any of the following:

(i) An adverse change in the enrollee's health status;

(ii) The cost of meeting the enrollee's health care needs or because of the enrollee's utilization of services;

(iii) The enrollee's diminished mental capacity; or

(iv) Uncooperative or disruptive behavior resulting from the enrollee's special needs or behavioral health condition, except when continued enrollment in the MCO or PCCM seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees.

(c) The agency will not approve a request to end enrollment of an enrollee's behavioral health services. The agency may determine to transition the enrollee to behavioral health services only (BHSO).

(d) When the agency receives a request from an MCO to end enrollment of an enrollee, the agency reviews each request on a case-by-case basis. The agency will respond to the MCO in writing with the decision. If the agency grants the request to end enrollment:

(i) The MCO will notify the enrollee in writing of the decision. The notice must include:

(A) The enrollee's right to use the MCO's grievance system as described in WAC 182-538-110; and

(B) The enrollee's right to use the agency's hearing process (see WAC 182-526-0200 for the hearing process for enrollees).

(ii) The agency will send a written notice to the enrollee at least ~~(ten)~~ 10 calendar days in advance of the effective date that enrollment will end. The notice to the enrollee includes the information in subsection (3)(c) of this section.

(e) The MCO will continue to provide services to the enrollee until the date the person is no longer enrolled.

(f) The agency may exempt the client for the period of time the circumstances are expected to exist. The agency may periodically review those circumstances to determine if they continue to exist. Any authorized exemption will continue only until the client can be enrolled in IMC.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538-130, filed 11/27/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-23-021, § 182-538-130, filed 11/4/16, effective 1/1/17; WSR 15-24-098, § 182-538-130, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 41.05.021, 42 C.F.R. 438. WSR 13-02-010, § 182-538-130, filed 12/19/12, effective 2/1/13. WSR 11-14-075, recodified as § 182-538-130, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 08-15-110, § 388-538-130, filed 7/18/08, effective 8/18/08; WSR 06-03-081, § 388-538-130, filed 1/12/06, effective 2/12/06; WSR 03-18-111, § 388-538-130, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. WSR 02-01-075, § 388-538-130, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. WSR 00-04-080, § 388-538-130, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-538-130, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW

74.08.090 and 1995 2nd sp.s. c 18. WSR 95-18-046 (Order 3886), § 388-538-130, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. WSR 93-17-039 (Order 3621), § 388-538-130, filed 8/11/93, effective 9/11/93.]

WSR 22-05-060

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 10, 2022, 3:25 p.m.]

Supplemental Notice to WSR 21-24-018.

Preproposal statement of inquiry was filed as WSR 21-17-059.

Title of Rule and Other Identifying Information: WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010 (4)(b)(ii) and 192-150-155 Verification requirement for an underlying health condition under RCW 50.20.050 (2)(b)(xii)(C)(II).

Hearing Location(s): On March 24, 2022, at 9:00 a.m., Zoom, meeting ID 871 6119 4144, Passcode 299796, Call-in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/87161194144?pwd=bExzNkRndlRtWUJQZ1JiUWtFOU5wdz09>.

Date of Intended Adoption: March 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 March 24, 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 March 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 5061 (2021) provides, among other things, good cause to leave work when during a public health emergency, the claimant was unable to perform their work for the employer from the claimant's home; the claimant is able and available to perform, and can actively seek suitable work which can be performed for an employer from the claimant's home; and the claimant or another individual residing with the claimant is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor of a disease that is the subject of a public health emergency. ESSB 5061, section 10, chapter 2, Laws of 2021 (codified at RCW 50.20.050 (2)(b)(xii)(C)(II)). ESSB 5061 (2021) also provides that during the weeks of a public health emergency, an unemployed individual may meet the availability requirements of RCW 50.20.010 (1)(c) if they are able and available to perform, and [are] actively seeking suitable work which can be performed for an employer from the individual's home; and the unemployed individual or another individual residing with the unemployed individual is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the subject of the public health emergency. Section 8, chapter 2, Laws of 2021 (codified at RCW 50.20.010 (4)(b)(ii)). Sections 8 and 10 of ESSB 5061 direct the employment security department (ESD) to adopt rules specifying how it will verify a higher risk individual's underlying health condition. The proposed rules require a claiming individual to obtain a certification from a health care provider that includes the provider's qualifications and contact information as well as information sufficient to establish the underlying health condition. The rules also clarify that benefits will be denied if an individual fails to provide the certification.

This supplemental filing adds WAC 192-150-155 Verification requirement for an underlying health condition under RCW 50.20.050 (2)(b)(xii)(C)(II), which was omitted from the proposal filed as WSR 21-24-018.

Reasons Supporting Proposal: Pursuant to ESSB 5061 (2021), ESD is required to verify the underlying health condition of higher risk individuals under RCW 50.20.010 (4)(b)(ii) and 50.20.050 (2)(b)(xii)(C)(II). The proposed rules should be adopted because they explain how ESD will undertake the verification process.

Statutory Authority for Adoption: RCW 50.20.010 (4)(b)(ii) and 50.20.050 (2)(b)(xii)(C)(II) provide specific rule-making authority for verifying underlying health conditions. RCW 50.12.010 and 50.12.040 provide general rule-making authority to the ESD.

Statute Being Implemented: RCW 50.20.010 and 50.20.050.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, 360-890-3472; Implementation and Enforcement: Julie Lord, Olympia, 360-890-3635.

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, 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 do not create additional tax burden on employers.

February 10, 2022

Dan Zeitlin

Employment Security Policy Director

OTS-2974.1

NEW SECTION

WAC 192-150-155 Verification requirement for an underlying health condition under RCW 50.20.050 (2)(b)(xii)(C)(II). (1)(a) An individual who asserts they have good cause to voluntarily quit employment because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency will need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have

an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department will deny benefits under WAC 192-140-105 if the individual fails to provide the certification.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

[]

OTS-2980.2

NEW SECTION

WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010 (4) (b) (ii). (1) (a) An individual who limits their availability for work because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency may need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department may require the individual to provide additional documentation or certification to substantiate the underlying health condition if:

(i) Circumstances of the underlying health condition change;

(ii) Information is provided to the department that the employee may no longer have an underlying health condition; or

(iii) Other circumstances cause the department to question the existence or continued existence of the individual's underlying health condition.

(d) The department will deny benefits under WAC 192-140-070 if the individual fails to provide the certification when requested.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

[]

WSR 22-05-063
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed February 11, 2022, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-097.

Title of Rule and Other Identifying Information: WAC 415-111-110
Member and employer responsibility.

Hearing Location(s): On March 22, 2022, at 10:00 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Join Zoom meeting <https://us02web.zoom.us/j/89934962268?pwd=dHUrL0dmZTlSOTBBVGN2ZEFZYjgyZz09>, phone 253-215-8782, Meeting ID 899 3496 2268, Passcode 338767.

Date of Intended Adoption: March 23, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by March 21, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, TTY 711, email drs.rules@drs.wa.gov, by March 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify how DRS will determine if a Plan 3 member has experienced a loss of investment earnings resulting from their employer's delay in the submittal of contributions, and how such a loss will be calculated.

Reasons Supporting Proposal: To provide employers and members expectations on what to expect when contributions are delayed.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.34.040.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Mike Ricchio, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7227.

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.

February 11, 2022
Rubi Reaume
Rules Coordinator

OTS-3520.1

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

WAC 415-111-110 Member and employer responsibility. (1) **What am I responsible for as a Plan 3 member?** As a Plan 3 member your responsibilities include, but are not limited to:

- (a) Adhering to time frames;
- (b) Making investment decisions for your defined contribution account;
- (c) Reviewing account information provided on statements, such as quarterly statements, and notifying the correct organization of any errors;
- (d) Filling out the correct form for a requested action;
- (e) Correctly completing the appropriate form for a requested action and submitting the form to the correct organization as directed on each form; and
- (f) Monitoring to ensure contributions do not exceed Internal Revenue Code limits (see WAC 415-111-111).

(2) **What can happen if I do not fulfill my Plan 3 responsibilities?** If you do not fulfill your responsibilities, the consequences may include, but are not limited to:

- (a) You may not qualify for certain benefits, such as the transfer payment;
- (b) You may have a delay in the correction of errors on your account;
- (c) You may have a delay in the processing of your request for a defined contribution withdrawal; or
- (d) You may have a delay in the investment of your account as directed.

(3) **What responsibilities do employers have?** Employers' responsibilities include, but are not limited to:

- (a) Adhering to Plan 3 administrative requirements, including the respective roles of employers and employees, communicated to employers by the department in written materials and formal training;
- (b) Maintaining a supply of Plan 3 forms;
- (c) Reporting an employee's Plan 3 transfer decision as soon as possible after receipt of the appropriate form from the employee;
- (d) Submitting to DRS the form on which the member made the Plan 3 transfer decision as soon as possible after receipt of the appropriate form;
- (e) Reporting an employee's contribution rate decision as soon as possible after receipt of the appropriate form from the employee;
- (f) Reporting an employee's investment program as soon as possible after receipt of the appropriate form from the employee;
- (g) Monitoring to ensure that a member's contributions do not exceed Internal Revenue Code limits (see WAC 415-111-111); and
- (h) Submitting contributions to the department as soon as reasonable and at least in accordance with RCW 41.50.120, "reasonableness" will be based on the facts and circumstances.

Example

Assume the following:

- An employer has one payroll system;
- Payroll checks are issued semimonthly;
- At the same time checks are cut, the payroll department produces a data tape of employee contributions that has to be checked for accuracy, and checking the tape takes four days;

■ Once the accuracy of the data tape is confirmed, a check for the aggregate amount of employee contributions is sent by the employer to DRS; and

■ The entire process, from the cutting of payroll checks to the cutting of the aggregate employee contribution check takes eight days. In this situation, eight days is a "reasonable" period of time.

(4) What can happen if my employer does not fulfill its responsibilities?

(a) If your employer does not fulfill its responsibilities, the consequences may include, but are not limited to:

(i) Your employer may have to make your member account whole;

(ii) Your employer may be subject to penalties assessed by the department; or

(iii) Your employer may be subject to penalties assessed by the Internal Revenue Service.

(b) If the department determines that an employer has erred in its administrative role, such that an employee incurs an investment loss, the department will determine the amount of loss and bill the employer.

(5) How will the department determine the amount of loss I have incurred?

(a) If your employer has not taken contributions from your pay, the department will determine that you have not incurred a loss because you have had access to the funds.

(b) If your employer has deducted contributions from your pay and not submitted them timely to the department, the loss will be calculated as:

(i) The difference between the number of shares your contributions would have purchased if they had been submitted in alignment with your employer's normal payroll cycle and the number of shares your contributions purchase at the time they are added to your account.

(ii) If the delay results in additional shares for you, those shares will stay in your account.

(iii) In computing the loss, the department will use your current investment allocation.

[Statutory Authority: RCW 41.50.050(5), 41.50.112, 41.50.145, chapter 41.34 RCW. WSR 02-03-120, § 415-111-110, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-111-110, filed 12/12/00, effective 1/12/01.]

WSR 22-05-071
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 15, 2022, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-112.

Title of Rule and Other Identifying Information: Chapter 392-198 WAC, Training—School employees—HIV/AIDS. Proposing to include blood-borne pathogens.

Hearing Location(s): On March 23, 2022, at 10:00 a.m., webinar via Zoom (call-in option will be available). Due to ongoing public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit office of superintendent of public instruction's (OSPI) website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email Kristin.murphy@k12.wa.us.

Date of Intended Adoption: March 25, 2022.

Submit Written Comments to: Annie Hetzel, OSPI, P.O. Box 47200, Olympia, WA 98504, email annie.hetzel@k12.wa.us, by March 23, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by March 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is considering rule making to amend the rules concerning school employee training and education for blood-borne pathogens. RCW 70.24.290 was amended (HB [ESHB] 1551, 2020) and directs OSPI to adopt rules concerning educating and training school employees on the prevention, transmission, and treatment of blood-borne pathogens. Previously, the requirement was for education and training concerning HIV/AIDS but has been amended to include blood-borne pathogens.

Reasons Supporting Proposal: The proposed rule revisions are needed to modernize the language in WAC intended to destigmatize HIV/AIDS. A more generalized approach to training staff concerning blood-borne pathogens is necessary for effective prevention of potential disease transmission.

Statutory Authority for Adoption: RCW 70.24.290.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Annie Hetzel, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6040.

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. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i).

Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed

amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

February 15, 2022
Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3476.1

Chapter 392-198 WAC
TRAINING—SCHOOL EMPLOYEES—((HIV/AIDS)) BLOOD-BORNE PATHOGENS

AMENDATORY SECTION (Amending WSR 91-18-006, filed 8/23/91, effective 9/23/91)

WAC 392-198-005 Authority. The authority for this chapter is RCW 70.24.290 which ~~((authorizes))~~ requires the superintendent of public instruction to adopt rules ~~((that require))~~ mandating appropriate education and training ~~((of))~~ for public school employees ~~((about))~~ on the transmission, prevention, and treatment of ~~((HIV/AIDS))~~ diseases caused by blood-borne pathogens as defined by RCW 70.24.017(1). The superintendent of public instruction is further required to develop the course content and educational material necessary in consultation with the department of health ~~((under RCW 70.24.250))~~. OSPI is adopting rules from chapter 296-823 WAC unless otherwise provided here.

[Statutory Authority: RCW 70.24.290. WSR 91-18-006 (Order 91-16), § 392-198-005, filed 8/23/91, effective 9/23/91.]

AMENDATORY SECTION (Amending WSR 91-18-006, filed 8/23/91, effective 9/23/91)

WAC 392-198-010 Purpose((s)). The purpose of this chapter is to provide public school districts with the mandatory ~~((and supplement-
tal))~~ course content requirements for training school district employees regarding the transmission, prevention, and treatment of ~~((HIV/
AIDS))~~ diseases caused by blood-borne pathogens.

[Statutory Authority: RCW 70.24.290. WSR 91-18-006 (Order 91-16), § 392-198-010, filed 8/23/91, effective 9/23/91.]

AMENDATORY SECTION (Amending WSR 91-18-006, filed 8/23/91, effective 9/23/91)

WAC 392-198-015 Course content requirements for ((HIV/AIDS)) blood-borne pathogen inservice training—Mandatory. ((Pursuant to RCW 70.24.250 and)) In accordance with RCW 70.24.290, the ((HIV/AIDS)) blood-borne pathogen training provided by public school districts ((shall)) must include ((:)

- ~~(1) History and epidemiology of HIV/AIDS;~~
- ~~(2) Methods of transmission of HIV;~~
- ~~(3) Methods of prevention of HIV including universal precautions for handling of body fluids;~~
- ~~(4) Current treatment for symptoms of HIV and prognosis of disease progression;~~
- ~~(5) State and federal laws governing discrimination of persons with HIV/AIDS;~~
- ~~(6) State and federal laws regulating confidentiality of a person's HIV antibody status))~~ the elements outlined in WAC 296-823-12005 with an emphasis on basic, essential skills such as handwashing and use of personal protective equipment.

[Statutory Authority: RCW 70.24.290. WSR 91-18-006 (Order 91-16), § 392-198-015, filed 8/23/91, effective 9/23/91.]

AMENDATORY SECTION (Amending WSR 91-18-006, filed 8/23/91, effective 9/23/91)

WAC 392-198-030 New employee training. Each school district ((shall)) must ensure that newly hired school district employees ((shall)) receive the ((HIV/AIDS)) blood-borne pathogens training prescribed in WAC 392-198-015 ((within six months from the first day of employment in the district)) prior to assigning tasks where occupational exposure might occur and at least annually and within one year of the previous training, in alignment with WAC 296-823-12005.

[Statutory Authority: RCW 70.24.290. WSR 91-18-006 (Order 91-16), § 392-198-030, filed 8/23/91, effective 9/23/91.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-198-020 Course content requirements for HIV/AIDS inservice training—Supplemental.
- WAC 392-198-025 Continuing inservice.

WSR 22-05-072

PROPOSED RULES

HORSE RACING COMMISSION

[Filed February 15, 2022, 9:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-066.

Title of Rule and Other Identifying Information: WAC 260-70-625 Interarticular [Intra articular] injections—Restrictions.

Hearing Location(s): On April 8, 2022, at 9:30 a.m., video conference via Zoom; or Auburn City Council Chambers, 25 West Main, Auburn, WA 98002. Dependent on gathering limits, method of meeting will be determined at a later date and posted on www.whrc.wa.gov.

Date of Intended Adoption: April 8, 2022.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by April 1, 2022.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by April 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add a section to set a mandatory stand-down time following a horse receiving an interarticular [intra articular] injection when they are ineligible to race or work to be removed from the official veterinarian list.

Reasons Supporting Proposal: This ensures that an interarticular [intra articular] injection that was administered to a horse does not affect the official veterinarians' ability to determine the soundness of a horse scheduled to race or work.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

February 15, 2022
Douglas L. Moore
Executive Secretary

OTS-2656.4NEW SECTION**WAC 260-70-625 Intra articular injections—Restrictions. (1)**

Horses which receive an intra articular joint injection are ineligible to race or work off the official veterinarians list for a period of

seven days following an intra articular joint injection. The detection of two or more corticoid steroids in a post race sample will be considered stacking and carry a Class C penalty.

(2) For purposes of counting, the date of the injection is counted as the first day. The horse is eligible to race on the eighth day.

[]

WSR 22-05-073

PROPOSED RULES

HORSE RACING COMMISSION

[Filed February 15, 2022, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-065.

Title of Rule and Other Identifying Information: WAC 260-70-640
Permitted medications.

Hearing Location(s): On April 8, 2022, at 9:30 a.m., video conference via Zoom; or Auburn City Council Chambers, 25 West Main, Auburn, WA 98002. Dependent on gathering limits, method of meeting will be determined at a later date and posted on www.whrc.wa.gov.

Date of Intended Adoption: April 8, 2022.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by April 1, 2022.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by April 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the penalty for a "stacking" violation to a B penalty.

Reasons Supporting Proposal: A stacking violation penalty was not defined in the regulation and will give guidance to the board of stewards if a violation occurs.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

February 15, 2022
Douglas L. Moore
Executive Secretary

OTS-2630.6

AMENDATORY SECTION (Amending WSR 18-07-015, filed 3/9/18, effective 4/9/18)

WAC 260-70-640 Permitted medication. Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Failure to administer permitted medication to a horse on a program of permitted medication is a violation of these rules.

(1) The use of one of three approved nonsteroidal anti-inflammatory drugs (NSAIDs) is permitted under the following conditions:

(a) The drug may not exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least (~~twenty-four~~) 24 hours before the post time for the race in which the horse is entered:

- (i) Phenylbutazone - 2.0 micrograms per milliliter;
- (ii) Flunixin - (~~20~~) 20.0 nanograms per milliliter;
- (iii) Ketoprofen - (~~2~~) 2.0 nanograms per milliliter.

(b) No NSAID, including the approved NSAIDs listed in this rule(~~r~~) may be administered within the (~~twenty-four~~) 24 hours before post time for the race in which the horse is entered.

(c) The presence of a second approved NSAID will be considered a Class B violation if the second of the approved NSAIDs is over the secondary threshold as follows:

- (i) Phenylbutazone - 0.3 mcg per milliliter;
- (ii) Flunixin - 3 ng per milliliter;
- (iii) Ketoprofen - 1 ng per milliliter.

(d) Any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs must be discontinued at least (~~forty-eight~~) 48 hours before the post time for the race in which the horse is entered.

(2) Any horse to which a NSAID has been administered is subject to having a blood and/or urine sample(s) taken at the direction of an official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

[Statutory Authority: RCW 67.16.020. WSR 18-07-015, § 260-70-640, filed 3/9/18, effective 4/9/18; WSR 16-09-015, § 260-70-640, filed 4/11/16, effective 5/12/16; WSR 12-07-005, § 260-70-640, filed 3/9/12, effective 4/9/12. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 08-09-044, § 260-70-640, filed 4/10/08, effective 5/11/08; WSR 07-07-036, § 260-70-640, filed 3/12/07, effective 4/12/07; WSR 06-09-009, § 260-70-640, filed 4/10/06, effective 5/11/06; WSR 05-07-067, § 260-70-640, filed 3/11/05, effective 4/11/05. Statutory Authority: RCW 67.16.040. WSR 96-10-001, § 260-70-640, filed 4/17/96, effective 5/18/96.]

WSR 22-05-074

PROPOSED RULES

HORSE RACING COMMISSION

[Filed February 15, 2022, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-031.

Title of Rule and Other Identifying Information: WAC 260-28-295
Trainer responsibility.

Hearing Location(s): On April 8, 2022, at 9:30 a.m., video conference via Zoom; or Auburn City Council Chambers, 25 West Main, Auburn, WA 98002. Dependent on gathering limits, method of meeting will be determined at a later date and posted on www.whrc.wa.gov.

Date of Intended Adoption: April 8, 2022.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by April 1, 2022.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.state.wa.us, by April 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To require a trainer that "ships in" a horse to race from outside the racing facility to provide 14 days of medical records on the horse upon request.

Reasons Supporting Proposal: Knowledge of the medical treatments given on the horse will provide the official veterinarian insight as to any possible preexisting conditions during a prerace exam.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

February 15, 2022
Douglas L. Moore
Executive Secretary

OTS-1546.1

AMENDATORY SECTION (Amending WSR 18-07-019, filed 3/9/18, effective 4/9/18)

WAC 260-28-295 Trainer responsibility. The purpose of this section is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

(1) The trainer is responsible for and is the absolute insurer of the condition of the horses entered regardless of the acts of third parties.

(2) The trainer is responsible for the condition of horses in his/her care.

(3) The trainer will immediately notify the owner(s) of any horses in the trainer's care of any pending rule violations involving their horse(s) including, but not limited to, alleged medication violations. Notice to the trainer will be deemed notice to the owner.

(4) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer will be held responsible.

(5) A trainer will prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(6) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(7) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) If a colt or horse has been gelded, promptly submit a completed gelding report to The Jockey Club Office, or report the fact to the racing secretary;

(h) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

(i) Maintaining knowledge of the medication record and medication status of horses in his/her care;

(j) Providing a fourteen day record of any procedure or medication administered to any horse entered to race that is not present on the grounds upon request of the official veterinarian;

(k) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

~~((k))~~ (l) Ensuring the fitness to perform creditably at the distance entered;

~~((l))~~ (m) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in WAC 260-70-570;

~~((m))~~ (n) Ensuring proper bandages, equipment and shoes;

~~((n))~~ (o) Attending the collection of a hair, urine, or blood sample or delegating a licensed employee or the owner to do so; and

~~((o))~~ (p) Ensuring that all the trainer's employees wear a safety helmet and safety vest while on horseback, in compliance with WAC 260-12-180.

[Statutory Authority: RCW 67.16.020. WSR 18-07-019, § 260-28-295, filed 3/9/18, effective 4/9/18; WSR 16-09-034, § 260-28-295, filed 4/14/16, effective 5/15/16; WSR 12-05-042, § 260-28-295, filed 2/10/12, effective 3/12/12. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 08-05-090, § 260-28-295, filed 2/15/08, effective 3/17/08. Statutory Authority: RCW 67.16.020. WSR 07-03-065, § 260-28-295, filed 1/16/07, effective 2/16/07.]

WSR 22-05-078
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed February 15, 2022, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-152.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-412-0015 General information about your food assistance allotments, 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food? These amendments are currently in place via emergency adoption filed under WSR 22-04-004.

Hearing Location(s): On March 22, 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/office-of-the-secretary/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 March 23, 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 March 22, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by 5:00 p.m. on March 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments provide annual updates to basic food standards relating to income, deductions, and benefits.

Reasons Supporting Proposal: Income limits and minimum and maximum benefit amounts, deductions, and resource limits are updated annually by the United States Department of Agriculture, Food and Nutrition Services, effective October 1.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, 74.08A.250.

Rule is necessary because of federal law, Agriculture Improvement Act of 2018 (2018 Farm Bill), Sec. 4002.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carolyn Horlor, P.O. Box 45470, Olympia, WA 98504-5470, 360-364-0676.

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.

February 14, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4889.4

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) How we determine monthly allotments:

(a) We calculate your monthly allotment for federally funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) Maximum allotment:

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) Prorated benefits in the first month. If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) Combined allotment for first and second month's benefits. If you apply for benefits on or after the sixteenth of the month and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) **Minimum allotment.** Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) (~~Sixteen~~) Twenty dollars if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) (~~Sixteen~~) Twenty dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) **Use of food assistance benefits.** Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-412-0015, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-412-0015, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 16-20-087, § 388-412-0015, filed 10/4/16, effective 2/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-412-0015, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-412-0015, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-412-0015, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0015, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-412-0015, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-412-0015, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-02-016, § 388-412-0015, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-412-0015, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 01-18-054, § 388-412-0015, filed 8/30/01, effective 9/30/01; WSR 99-16-024, § 388-412-0015, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0015, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or ((less)) fewer	(\$167) \$177
4	(\$181) \$184
5	(\$212) \$215
6 or more	(\$243) \$246

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9

(a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0185, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0185, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9

(d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0185, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0185, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38,

dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0185, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0185, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0185, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0185, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0185, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0185, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0185, filed 11/17/10, effective 12/18/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 U.S.C. 2014 (a) and (e)(1); 7 C.F.R. §§ 273.1 and 273.9 (d)(1). 10-16-104, § 388-450-0185, filed 8/2/10, effective 9/2/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and P.L. 107 - 171 § 4101. WSR 09-23-004, § 388-450-0185, filed 11/5/09, effective 11/15/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and Food and Nutrition Act of 2008, Title 7 Part 273 of the C.F.R. WSR 09-07-054, § 388-450-0185, filed 3/11/09, effective 4/11/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-450-0185, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0185, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0185, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0185, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0185, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0185, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-044, § 388-450-0185, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR

99-16-024, § 388-450-0185, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0185, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC

388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of one hundred (~~(fifty-seven)~~) fifty-nine dollars. If the homeless AU has shelter costs in excess of (~~one hundred fifty-seven dollars~~) this amount, the AU has the option to claim either:

- (i) The homeless shelter deduction; or
- (ii) Actual shelter costs.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of five hundred (~~(eighty-six)~~) ninety-seven dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~(eighty-six)~~) ninety-seven dollars.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9

(a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021

Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0190, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0190, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d)(iii)(B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0190, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0190, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0190, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0190, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0190, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0190, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.10. WSR 13-11-103, § 388-450-0190, filed 5/20/13, effective 6/20/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0190, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0190, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0190, filed 11/17/10, effective 12/18/10; WSR 09-24-001, § 388-450-0190, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-450-0190, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0190, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055,

74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0190, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0190, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0190, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-07-138, § 388-450-0190, filed 3/22/04, effective 5/1/04; WSR 03-21-030, § 388-450-0190, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0190, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0190, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-06-030, § 388-450-0190, filed 3/2/01, effective 4/2/01; WSR 99-16-024, § 388-450-0190, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0190, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?

(1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~forty-nine~~) fifty-nine dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~forty-nine~~) fifty-nine dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred (~~fifty-two~~) sixty-one dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of fifty-nine dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0195, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0195, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0195, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0195, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.9 (d) (6) (iii) (B). WSR 17-10-069, § 388-450-0195, filed 5/3/17, effective 6/3/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0195, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0195, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0195, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090 and Agricultural Act of 2014. WSR 14-12-085, § 388-450-0195, filed 6/3/14, effective 7/4/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0195, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0195, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9 (d) (6) (3). WSR 10-18-050, § 388-450-0195, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.005,

74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-450-0195, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 08-21-106, § 388-450-0195, filed 10/16/08, effective 11/16/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-036, § 388-450-0195, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 273.9 (d)(6)(iii)(b). WSR 06-21-011, § 388-450-0195, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-10-056, § 388-450-0195, filed 5/1/06, effective 6/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9. WSR 05-19-062, § 388-450-0195, filed 9/16/05, effective 10/17/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-09-087, § 388-450-0195, filed 4/19/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0195, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0195, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0195, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0195, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510. WSR 00-22-065, § 388-450-0195, filed 10/27/00, effective 11/1/00. Statutory Authority: RCW 74.040.510 [74.04.510]. WSR 99-24-052, § 388-450-0195, filed 11/29/99, effective 12/1/99. Statutory Authority: RCW 74.04.510. WSR 99-09-055, § 388-450-0195, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 74.04.510 and 7 C.F.R. 273.9 (d)(6). WSR 99-01-069, § 388-450-0195, filed 12/14/98, effective 1/14/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0195, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 19-01-105, filed 12/18/18, effective 2/1/19)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

- (a) **"We"** means the department of social and health services.
- (b) **"You"** means a person applying for or getting benefits from the department.
- (c) **"Fair market value"** or **"FMV"** means the price at which you could reasonably sell the resource.
- (d) **"Equity value"** means the FMV minus any amount you owe on the resource.
- (e) **"Community property"** means a resource in the name of the husband, wife, or both.
- (f) **"Separate property"** means a resource of a married person that one of the spouses:
 - (i) Had possession of and paid for before they were married;
 - (ii) Acquired and paid for entirely out of income from separate property; or
 - (iii) Received as a gift or inheritance.

- (2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:
- (a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;
 - (b) You own the resource and we consider you to own a resource if:
 - (i) Your name is on the title to the property; or
 - (ii) You have property that does not have a title;
 - (c) You have control over the resource, which means the resource is actually available to you; and
 - (d) You could legally sell the resource or convert it into cash within twenty days.
- (3) For cash assistance, you must try to make your resources available even if it will take you more than twenty days to do so, unless:
- (a) There is a legal barrier; or
 - (b) You must petition the court to release part or all of a resource.
- (4) When you apply for assistance, we count your resources as of:
- (a) The date of your interview, if you are required to have an interview; or
 - (b) The date of your application, if you are not required to have an interview.
- (5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.
- (6) For cash assistance, there is an equity value resource limit of six thousand dollars.
- (7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.
- (8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:
- (a) Three thousand (~~(five)~~) seven hundred fifty dollars if your AU has either an elderly or disabled individual; or
 - (b) Two thousand (~~(two)~~) five hundred (~~(fifty)~~) dollars for all other AUs.
- (9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:
- (a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.
 - (b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.
- (10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.
- (11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.
- (12) We do not count the resources of victims of family violence when:
- (a) The resource is owned jointly with members of the former household;
 - (b) Availability of the resource depends on an agreement of the joint owner; or
 - (c) Making the resource available would place the client at risk of harm.

- (13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:
- (a) Who owns a resource;
 - (b) Who has legal control of a resource;
 - (c) The value of a resource;
 - (d) The availability of a resource; or
 - (e) The portion of a property you or another person owns.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 19-01-105, § 388-470-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-470-0005, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-470-0005, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 11-37, "Supplemental Nutrition Assistance Program FY 2012 Asset Limit Increase for Households with and [an] Elderly or Disabled Member." WSR 11-24-028, § 388-470-0005, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0005, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food?

(1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

~~((a))~~ The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

~~((b) From January 1, 2021 through June 30, 2021, the maximum monthly food assistance benefit your AU could receive is listed in column E of this subsection.)~~

EFFECTIVE ~~((10/1/2020))~~ 10/1/2021

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net (Countable) Monthly Income	Column D Maximum Allotment	((Column E 15% Max Allotment))	Column ((F)) <u>E</u> 165% of Poverty Level
1	((1,383)) <u>\$1,396</u>	((1,064)) <u>\$1,074</u>	((204)) <u>\$250</u>	((234))	((1,755)) <u>\$1,777</u>
2	((1,868)) <u>1,888</u>	((1,437)) <u>1,452</u>	((374)) <u>459</u>	((430))	((2,371)) <u>2,396</u>

EFFECTIVE ((10/1/2020)) 10/1/2021

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net (Countable) Monthly Income	Column D Maximum Allotment	Column E 115% Max Allotment	Column (F) <u>E</u> 165% of Poverty Level
3	((2,353)) <u>2,379</u>	((1,810)) <u>1,830</u>	((535)) <u>658</u>	((616))	((2,987)) <u>3,020</u>
4	((2,839)) <u>2,871</u>	((2,184)) <u>2,209</u>	((680)) <u>835</u>	((782))	((3,603)) <u>3,644</u>
5	((3,324)) <u>3,363</u>	((2,557)) <u>2,587</u>	((807)) <u>992</u>	((929))	((4,219)) <u>4,268</u>
6	((3,809)) <u>3,855</u>	((2,930)) <u>2,965</u>	((969)) <u>1,190</u>	((1,114))	((4,835)) <u>4,893</u>
7	((4,295)) <u>4,347</u>	((3,304)) <u>3,344</u>	((1,071)) <u>1,316</u>	((1,232))	((5,451)) <u>5,517</u>
8	((4,780)) <u>4,839</u>	((3,677)) <u>3,722</u>	((1,224)) <u>1,504</u>	((1,408))	((6,067)) <u>6,141</u>
9	((5,266)) <u>5,331</u>	((4,051)) <u>4,101</u>	((1,377)) <u>1,692</u>	((1,584))	((6,683)) <u>6,766</u>
10	((5,752)) <u>5,823</u>	((4,425)) <u>4,480</u>	((1,530)) <u>1,880</u>	((1,760))	((7,299)) <u>7,391</u>
Each Additional Member	((+486)) <u>+492</u>	((+374)) <u>+379</u>	+153	((+176))	((+616)) <u>+625</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9

(a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-478-0060, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-478-0060, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9

(d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-478-0060, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and

74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-478-0060, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-478-0060, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-478-0060, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-478-0060, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-478-0060, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-478-0060, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-478-0060, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-478-0060, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-478-0060, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-478-0060, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-478-0060, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-478-0060, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-478-0060, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-478-0060, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-478-0060, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-21-050, § 388-478-0060, filed 10/14/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-478-0060, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510, 74.08.090. WSR 00-23-013, § 388-478-0060, filed

11/3/00, effective 12/4/00. Statutory Authority: RCW 74.04.510. WSR 99-24-053, § 388-478-0060, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-478-0060, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090. WSR 99-05-074, § 388-478-0060, filed 2/17/99, effective 3/20/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0060, filed 7/31/98, effective 9/1/98.]

WSR 22-05-080

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF REVENUE

(By the Code Reviser's Office)

[Filed February 15, 2022, 10:35 a.m.]

WAC 458-20-290, proposed by the department of revenue in WSR 21-16-050, appearing in issue 21-16 of the Washington State Register, which was distributed on August 18, 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 22-05-081

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed February 15, 2022, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-23-099.

Title of Rule and Other Identifying Information: WAC 182-501-0215
Wraparound with intensive services (WISe).

Hearing Location(s): On March 22, 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_gEBGwLk6Qxqjm9TlhCYM8A. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than March 23, 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 March 22, 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 March 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this rule to remove the restriction that the WISe program only applies to medicaid clients and add language to clarify the program is for those clients eligible for coverage under WAC 182-505-0210.

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 necessary because of state court decision, Thurston County Superior Court in *A.G.C. v. Washington State Health Care Authority*, no. 21-2-00479-34.

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: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Annette Schuffenhauer, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1254.

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 proposed filing does not impose a disproportionate cost impact on small businesses.

February 15, 2022

Wendy Barcus

OTS-3495.1

AMENDATORY SECTION (Amending WSR 20-15-026, filed 7/7/20, effective 8/7/20)

WAC 182-501-0215 Wraparound with intensive services (WISe). (1) Wraparound with intensive services (WISe) is a service delivery model that provides comprehensive behavioral health covered services and support to:

(a) (~~Medicaid-eligible~~) Clients age ((~~twenty~~) 20 or younger with complex behavioral health needs who are eligible for coverage under WAC 182-505-0210; and

(b) Their families.

(2) The authority, the managed care organizations, and the WISe provider agencies must use, continue to use, and substantially comply with the WISe quality plan (WISe QP) for the delivery of WISe. The purpose of the WISe QP is to:

(a) Provide a framework for quality management goals, objectives, processes, tools, and resources to measure the implementation and success of the WISe service delivery model; and

(b) Guide production, dissemination, and use of measures used to inform and improve WISe service delivery.

(3) The WISe QP, as may be amended from time to time, is incorporated by reference and is available online at <https://www.hca.wa.gov/billers-providers-partners/behavioral-health-recovery/wraparound-intensive-services-wise>.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-15-026, § 182-501-0215, filed 7/7/20, effective 8/7/20.]

WSR 22-05-083

PROPOSED RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed February 15, 2022, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-070.

Title of Rule and Other Identifying Information: WAC 246-918-801 Exclusions (physician assistants) and 246-919-851 Exclusions (physicians). The Washington medical commission (commission) is proposing amendments to expand the types of patients who are exempt from certain provisions of rule when being prescribed opioid drugs.

Hearing Location(s): On April 13, 2022, at 2:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Washington medical commission 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. Please register for opioid prescribing patient exemptions rules hearing on April 13, 2022, at 2:30 p.m. PST, at <https://attendee.gotowebinar.com/register/5336471307862283024>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 13, 2022.

Submit Written Comments to: Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview>, by April 6, 2022.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 800-525-0127, TTY 711, email medical.rules@wmc.wa.gov, by April 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing exempting patients in long-term acute care (LTAC) facilities, nursing homes, residential habilitation centers (RHC), and residential treatment facilities (RTF) from the opioid prescribing rules. This change will allow physicians and physician assistants in these facilities to continue the patient's pain medications without having to perform a history and physical or wait for a history and physical to be completed on the patient.

Reasons Supporting Proposal: As part of the commission's rule making for ESHB 1427, enacted in 2017 and codified as RCW 18.71.800, the commission received comments that adhering to the opioid prescribing rules for patients admitted to LTACs and nursing homes, is onerous. Specifically, the rules require a history and physical as well as a check of the prescription monitoring program (PMP) be completed prior to prescribing opioids. It has been stated that patients transferred to LTACs and nursing homes had a history and physical while in the previous facility and that practitioners in LTACs and nursing homes can rely on that assessment.

Inpatient hospital patients are currently exempt from the opioid prescribing rules. The commission recognizes that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment.

The commission has also received a comment regarding patients in RHCs, that they are also similarly situated to LTAC and nursing home patients. We received a similar comment about RTFs, that stated RTFs

are similar to RHCs except the stay at an RTF is usually short-term. As such, the commission is also exempting patients in RHCs and RTFs.

Statutory Authority for Adoption: RCW 18.71A.800, 18.71.017, and 18.130.050.

Statute Being Implemented: RCW 18.71A.800.

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

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Melanie de Leon, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2755.

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 Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-236-2727, TTY 711, email amelia.boyd@wmc.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).

Explanation of exemptions: The proposed rule does not affect small businesses. These rules only apply to providers.

February 15, 2022
Melanie de Leon
Executive Director

OTS-3321.2

Physician Assistants

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-801 Exclusions. WAC 246-918-800 through 246-918-935 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care;
- (3) ~~((The treatment of inpatient hospital patients who are patients who have been admitted to a hospital for more than twenty-four hours; or~~
- ~~(4))~~ The provision of procedural medications; or
- (4) The treatment of patients in the following facilities:
 - (a) Acute care hospitals licensed under chapter 70.41 RCW;
 - (b) Psychiatric hospitals licensed under chapter 71.12 RCW;

(c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;

(d) Long-term acute care hospitals as defined in RCW 74.60.010;

(e) Residential treatment facilities as defined in RCW 71.12.455;

or

(5) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection (4) of this section.

[Statutory Authority: RCW 18.71.017, 18.71.800, 18.71A.800 and 2017 c 297. WSR 18-23-061, filed 11/16/18, effective 1/1/19. Statutory Authority: RCW 18.71.450, 18.71A.100, 18.71.017, and 18.71A.020. WSR 11-12-025, § 246-918-801, filed 5/24/11, effective 1/2/12.]

OTS-3322.1

Physicians

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-919-851 Exclusions. WAC 246-919-850 through 246-919-985 do not apply to:

(1) The treatment of patients with cancer-related pain;

(2) The provision of palliative, hospice, or other end-of-life care;

~~(3) ((The treatment of inpatient hospital patients who are patients who have been admitted to a hospital for more than twenty-four hours; or~~

~~(4-))~~ The provision of procedural medications; or

(4) The treatment of patients in the following facilities:

(a) Acute care hospitals licensed under chapter 70.41 RCW;

(b) Psychiatric hospitals licensed under chapter 71.12 RCW;

(c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;

(d) Long-term acute care hospitals as defined in RCW 74.60.010;

(e) Residential treatment facilities as defined in RCW 71.12.455;

or

(5) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection (4) of this section.

[Statutory Authority: RCW 18.71.017, 18.71.800, 18.71A.800 and 2017 c 297. WSR 18-23-061, § 246-919-851, filed 11/16/18, effective 1/1/19. Statutory Authority: RCW 18.71.450, 18.71A.100, 18.71.017, and 18.71A.020. WSR 11-12-025, § 246-919-851, filed 5/24/11, effective 1/2/12.]

WSR 22-05-085
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 15, 2022, 1:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-100.

Title of Rule and Other Identifying Information: WAC 181-85-033 Activity-based continuing education credit hours, 181-85-202 Content standards for continuing education credit hours, 181-85-204 Cultural competency, diversity, equity, and inclusion standards, 181-79A-244 Certificate renewal requirements, 181-82A-210 Proposal process for a new specialty endorsement in Washington state, 181-82A-212 Proposal process for an organization to be approved to offer a specialty endorsement, 181-78A-232 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Candidate knowledge, skills, and cultural responsiveness, and 181-78A-236 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Field experience and clinical practice.

Adoption and implementation of the cultural competency, diversity, equity, and inclusion (CCDEI) standards.

Hearing Location(s): On March 24, 2022, at 8:00 a.m., SeaTac, Washington. Exact meeting location and a link to listen to the meeting virtually will be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: March 24, 2022.

Submit Written Comments to: Professional Educator Standards Board (PESB), 600 Washington Street S.E., Olympia, WA 98504, email pesb.k12.wa.us, by 8:00 a.m., Monday, March 21, 2022.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb.k12.wa.us, by 8:00 a.m., Thursday, March 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed WAC language adopts the CCDEI standards under RCW 28A.410.260. The WAC language includes integration and implementation of the CCDEI standards for professional learning and educator preparation programs.

Reasons Supporting Proposal: This proposed rule change would update the WAC to align with RCW 28A.410.260 regarding the CCDEI standards.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Sophia Keskey, 600 Washington Street S.E., Olympia, WA 98504, 360-890-5814; Implementation: Jisu Ryu, 600 Washington Street S.E., Olympia, WA 98504, 360-867-8510; and Enforcement: Erica Hernandez-Scott, 600 Washington Street S.E., Olympia, WA 98504, 360-890-2443.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

February 16, 2022
Sophia Keskey
Rules Coordinator

OTS-3613.1

AMENDATORY SECTION (Amending WSR 22-03-075, filed 1/18/22, effective 2/18/22)

WAC 181-78A-232 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Candidate knowledge, skills, and cultural responsiveness. Knowledge, skills, and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(1) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(a) Qualified faculty use multiple instructional strategies, pedagogies, and assessments to address candidates' academic language ability levels and cultural and linguistic backgrounds.

(b) Providers create opportunities for faculty members and program personnel to pursue, apply, and practice ongoing professional learning to improve their knowledge, skill, effectiveness, and cultural responsiveness.

(c) Faculty within the program and the unit collaborate among one another, with content specialists, P-12 schools, members of the broader professional community, and diverse members of local communities for continuous program improvement.

(d) Faculty members and program leaders systematically and comprehensively evaluate faculty's effectiveness in teaching and learning, and competence on the cultural competency, diversity, equity, and inclusion standards under WAC 181-85-204.

(2) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate the most recently published InTASC Standards, candidates in principal programs demonstrate the most recently published NELP - Building Level Standards, candidates in superintendent programs demonstrate the most recently published NELP - District Level Standards, candidates in program administrator programs demonstrate the most recently published NELP Building or District Level Standards, candidates in school counselor programs demonstrate the most recently published CACREP stand-

ards, candidates in school psychologist programs demonstrate the most recently published NASP standards for graduate preparation of school psychologists, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Teacher candidates must take a board approved basic skills assessment prior to program admission. A provider of a teacher preparation program must assure that all candidates entering the program have successfully met the basic skills requirement under chapter 181-01 WAC at the time of admission. The provider must collect and hold evidence of candidates meeting this requirement.

(c) Teacher candidates must take a content knowledge assessment prior to beginning student teaching. The provider must collect and hold evidence of candidates meeting this requirement. Teacher candidates apply content knowledge as reflected in board approved endorsement competencies. Endorsement assessments are not required for teacher candidates in career and technical education business and industry route programs.

(d) Providers ensure that educator candidates complete coursework on issues of abuse and emotional or behavioral distress in students under RCW 28A.410.035 and WAC 181-79A-200.

(e) Under RCW 28A.410.040, a teacher candidate whose only baccalaureate degree is in early childhood education, elementary education, or special education must have completed 30 quarter credits, or the equivalent in semester credits or continuing education credit hours, in one academic field in an endorsement area under WAC 181-82A-202.

(f) Candidates for an initial certificate in a career and technical education residency teacher preparation program must complete a minimum of 45 quarter credits, or the equivalent in semester credits or continuing education credit hours, in the specific career and technical education area for which certification is sought.

(3) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the professional standards adopted by the board for the role for which candidates are being prepared.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role, which were adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate most recently published INTASC Standards, candidates in principal programs demonstrate most recently published NELP - Building Level Standards, candidates in superintendent programs demonstrate most recently published NELP - District Level Standards, candidates in program administrator programs demonstrate the most recently published NELP Building or District Level Standards, candidates in school counselor programs demonstrate the most recently published CACREP standards, candidates in school psychologist programs demonstrate the most recently published NASP standards for graduate preparation of school psychologists, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Faculty and mentors provide regular and ongoing feedback to candidates regarding field based performance that is actionable and leads to improvement in candidates' practice.

(c) Providers demonstrate through structured observation, discussion, surveys, and/or artifacts that program completers effectively

apply the professional knowledge, skills, and dispositions that the preparation program was designed to achieve.

(d) Providers may use the edTPA teacher performance assessment as a formative tool as long as notification to candidates is included in all program descriptions under chapter 28A.410 RCW.

(e) Providers of career and technical educator preparation programs provide candidates all necessary guidance to document, demonstrate, and submit for approval the required hours of occupational experience.

(f) In order to ensure that teacher and principal candidates can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, teacher and principal preparation program providers must incorporate the social emotional standards and benchmarks, and must provide guidance to candidates on related competencies described in RCW 28A.410.270.

(4) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators as described in the cultural competency, diversity, equity, and inclusion standards under WAC 181-85-204.

(a) Providers ensure that candidates demonstrate knowledge and competence relative to cultural competency, diversity, equity, and inclusion standards under WAC 181-85-204.

(b) Providers offer all candidates meaningful, reflective opportunities to interact with racially and culturally diverse colleagues, faculty, P-12 practitioners, and P-12 students and families.

~~((b))~~ (c) Providers prepare candidates to adapt their practices based on students' prior experiences, cultural knowledge, and frames of reference to make learning encounters more relevant and effective.

~~((e))~~ (d) Providers ensure course work explicitly focuses on cultural responsiveness and integrates components of culturally responsive education within and throughout all courses.

~~((d))~~ (e) Faculty explicitly model equity pedagogy in course work and field experiences in ways that enable candidates to integrate their own cultural and linguistic backgrounds into classroom activities.

(5) Teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in RCW 28B.10.710.

(a) There shall be a one quarter or semester course, or the equivalent in continuing education credit hours, in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

[Statutory Authority: Chapter 28A.410 RCW. WSR 22-03-075, § 181-78A-232, filed 1/18/22, effective 2/18/22; WSR 21-20-052, § 181-78A-232, filed 9/28/21, effective 10/29/21; WSR 21-15-084, § 181-78A-232, filed 7/16/21, effective 8/16/21; WSR 21-08-023, § 181-78A-232, filed 3/29/21, effective 4/29/21; WSR 19-24-103, § 181-78A-232, filed 12/4/19, effective 1/4/20. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-144, § 181-78A-232, filed 7/24/19, effective 8/24/19.]

OTS-3606.1

AMENDATORY SECTION (Amending WSR 21-20-052, filed 9/28/21, effective 10/29/21)

WAC 181-78A-236 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Field experience and clinical practice. Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(1) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement under WAC 181-78A-125.

(a) The program provider and school partners cooperatively design, implement, and evaluate field experiences and clinical practices conforming to board standards and requirements for the role.

(b) Clinical practice for teacher candidates in programs approved to offer traditional routes to teacher certification must consist of no less than (~~four hundred fifty~~) 450 hours in a classroom setting, with a qualifying mentor teacher. Clinical practice for teacher candidates in programs approved to offer alternative routes to certification must consist of no less than (~~five hundred forty~~) 540 hours in a classroom setting with a qualifying mentor.

(c) Principal candidates complete an internship for a full school year, consisting of at least (~~five hundred forty~~) 540 hours, half of which must be during school hours when students and/or staff are present. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(d) Superintendent candidates must complete an internship of at least (~~three hundred sixty~~) 360 hours. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(e) Candidates in career and technical education teacher preparation programs as described in WAC 181-77-031 must complete a student teaching experience of at least (~~four hundred fifty~~) 450 hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and techni-

cal education standards approved by the professional educator standards board.

(f) Candidates in career and technical education administrator and business and industry route programs must complete a practicum of at least (~~sixty~~) 60 hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(g) Providers articulate in writing clear entry and exit criteria as well as a process for mitigating concerns during clinical practice for candidates, school leader(s), and the mentor.

(2) Providers ensure that candidates integrate knowledge and skills developed through field and industry experiences with the content of programs' course work.

(a) Providers offer field experiences in which teacher and principal candidates plan, practice, discuss, and reflect upon methods of instruction and differentiation, and all educator candidates demonstrate that they have the appropriate, specific relevant skills pursuant to WAC 181-78A-220 and 181-78A-232 to be effective in the role.

(b) Integrate assignments, assessments, and actionable feedback throughout candidates' field experiences.

(c) Provide faculty supervision, including supervisory visits, on an ongoing basis.

(d) Identify and recruit mentors for candidates who are educational leaders collaboratively with the partner school(s) or district(s).

(e) Ensure that candidates' mentors are fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(f) Mentors and school leaders are provided with a set of internship expectations and receive, or provide evidence of having received, training and experience mentoring adult learners and culturally responsive teaching and learning.

(g) Effectiveness of mentor preparation and communication are reviewed annually by program faculty.

(3) Providers offer field experiences in accordance with chapter 181-78A WAC and the board approved candidate assessment requirements.

(a) Ensure that educator candidates are placed in settings where they can be evaluated and given actionable feedback, including on the cultural competency, diversity, equity, and inclusion standards under WAC 181-85-204.

(b) Ensure that educator candidates are fingerprinted and have completed required character clearance prior to placement in field experience settings.

(4) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status or local population density.

(a) Field experiences provide opportunities to work in communities or with student populations with backgrounds dissimilar to the background of the candidate.

(b) Course assignments and discussions offer candidates opportunities to reflect upon interactions with diverse populations and communities in order to integrate professional growth in cultural responsiveness as a habit of practice.

(c) Candidates have opportunities to design, implement and receive feedback on cultural responsiveness in lessons, assignments, and activities.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-20-052, § 181-78A-236, filed 9/28/21, effective 10/29/21; WSR 21-08-023, § 181-78A-236, filed 3/29/21, effective 4/29/21; WSR 20-20-091, § 181-78A-236, filed 10/5/20, effective 11/5/20. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-144, § 181-78A-236, filed 7/24/19, effective 8/24/19.]

OTS-3607.1

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-79A-244 Certificate renewal requirements. Certificate renewal requirements include the following:

(1) **Equity-based school practices.** Applications for renewal dated July 1, 2023, and beyond, for the certificate types and roles as indicated in (a) and (b) of this subsection, must demonstrate completion of professional learning focused on equity based school practices aligned with the cultural competency, diversity, equity, and inclusion (CCDEI) standards under (~~RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the professional learning must be aligned to the cultural competency standards published by the board~~) WAC 181-85-204.

(a) Completion of at least (~~fifteen~~) 15 continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing teacher and CTE teacher certificates.

(b) Completion of at least (~~ten~~) 10 continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing principal, program administrator, superintendent, and CTE director certificates.

(c) Individuals holding at least one valid, expiration dated administrator certificate under (b) of this subsection are only required to meet the equity-based school practices requirement for administrators when renewing or reinstating a teacher certificate under (a) of this subsection.

(d) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet the equity-based school practices requirement by maintaining a valid National Board Certificate.

(e) A professional growth plan with at least one goal aligned to the standards in this subsection meets the equity-based school practices requirement.

(2) **National Professional Standards for Education Leaders.** Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of (~~ten~~) 10 continuing education

credit hours of professional learning focused on the National Policy Board for Educational Administration (NPBEA) Professional Standards for Educational Leaders (PSEL). A professional growth plan with at least one goal aligned to the PSEL standards meets the certificate renewal requirement in this subsection.

(3) Providers for professional learning in equity-based school practices and National Professional Standards for Education Leaders.

Professional learning under subsections (1) and (2) of this section must be provided by one or more of the following organizations. These organizations may only provide the professional learning for as long as they maintain status as a Washington state approved in-service education agency under chapter 181-85 WAC.

- (a) Association of Washington school principals;
- (b) Office of the superintendent of public instruction;
- (c) Professional educator standards board-approved administrator or teacher preparation program providers;
- (d) Washington education association;
- (e) Washington state educational service districts; or
- (f) Washington state school districts, tribal compact schools, approved charter schools, Washington school for the deaf, Washington school for the blind.

(4) Government-to-government relationships with federally recognized tribes.

(a) Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of five continuing education credit hours of professional learning focused on government-to-government relationships with federally recognized tribes.

(b) Professional learning related to government-to-government relationships with federally recognized tribes must be provided by one or more subject matter experts approved by the governor's office on Indian affairs in collaboration with the tribal leaders congress on education and the office of native education in the office of the superintendent of public instruction.

(c) Completion of a professional growth plan (PGP) may not be used to meet the requirement for professional learning in government-to-government relationships.

(5) Science, technology, engineering, math (STEM) integration.

Applications for certificate renewal must demonstrate completion of at least (~~fifteen~~) 15 continuing education credit hours, or at least one goal from an annual professional growth plan, emphasizing the integration of science, technology, engineering, and/or mathematics instruction under RCW 28A.410.2212.

(a) This renewal requirement applies to teachers in the following areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Specific endorsements in these endorsement areas are as published by the professional educator standards board.

(b) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet this requirement by maintaining a valid National Board Certificate.

(6) Suicide prevention training requirement. Renewal of certificates, and issuance of professional certificates, for school counselors, school psychologists, school nurses, and school social workers

requires completion of suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in this section.

Approved trainings meeting this suicide prevention training requirement will be as published by the professional educator standards board. The training program must be at least three hours in length. The professional educator standards board will consider these training programs as continuing education credit hours.

(7) Washington state department of health licenses.

(a) Holding a valid department of health license as a physical therapist in Washington state is a requirement for renewal of school physical therapist educational staff associate (ESA) certificate.

(b) Holding a valid department of health license as an occupational therapist in Washington state is required for renewal of school occupational therapist ESA certificates.

(c) Holding a valid department of health license as a registered nurse (RN) in Washington state is a requirement for renewal of school nurse ESA certificates.

(8) National certificates related to educational staff associate roles.

(a) Holding a valid Board Certified Behavior Analyst (BCBA) certificate from the Behavior Analyst Certification Board (BACB), or other national certificate as approved by the professional educator standards board, is a requirement for renewal of School Behavior Analyst ESA certificates.

(b) Holding a valid Certified Orientation and Mobility Specialist (COMS) Certificate from Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP), or, a valid National Orientation and Mobility Certification (NOMC) from the National Blindness Professional Certification Board (NBPCB), is a requirement for renewal of school Orientation and Mobility Specialist ESA Certificates.

(9) Continuing education role requirements. Except as otherwise required in Title 181 WAC, continuing education for the following roles must relate to the described areas.

(a) CTE teacher. Continuing education credit hours for renewal of CTE teacher certificates must relate to career and technical education methods, including those described in RCW 28A.700.010 and WAC 181-77A-165, or to the subject matter certified to teach.

(b) CTE director. Continuing education credit hours for renewal of CTE director certificates must relate to career and technical education, or supervisory or managerial subjects.

(c) School counselor. Continuing education credit hours for renewal must relate to:

(i) American School Counseling Association (ASCA) Professional Standards and Competencies; or

(ii) School Counselor Standards published by the National Board for Professional Teaching Standards (NBPTS).

(d) School psychologist. Continuing education credit hours for renewal certificates must relate to the National Association of School Psychologists (NASP) Professional Practices.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-79A-244, filed 7/16/21, effective 8/16/21.]

OTS-3604.1

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

WAC 181-82A-210 Proposal process for a new specialty endorsement in Washington state. Organizations seeking the creation of a new specialty endorsement in Washington state follow a two-phase process including a preproposal and a proposal.

(1) **Preproposal.** The applicants must submit a preproposal declaring an intent to submit a proposal for the creation of a new specialty endorsement in Washington state. The preproposal will address all requirements published by the board including, but not limited to, the following. The preproposal will:

(a) Provide the name of the specialty endorsement;

(b) Identify at least two organizations submitting the proposal for the new specialty endorsement. These organizations must be eligible to serve as in-service education agencies under WAC 181-85-045;

(c) Identify the proposed essential learnings for the specialty endorsement, or describe the plan to develop the essential learnings;

(d) Describe how the specialty endorsement is aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under ~~((RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposers will describe how the specialty endorsement is aligned and responsive to the cultural competency standards published by the board))~~ WAC 181-85-204; and

(e) Describe the need for the specialty endorsement, demonstrating response to educator, student, and community needs.

(2) **Proposal.** If the preproposal receives approval from the professional educator standards board, the proposers shall submit a proposal. The proposal will address all requirements published by the board including, but not limited to, the following:

(a) Identify any changes to the preproposal information since the preproposal was submitted;

(b) Letter of commitment from at least two organizations interested in seeking approval to offer the specialty endorsement. If the organizations submitting letters of commitment are the same organizations who are submitting the proposal, the proposal must include at least one letter of support from an additional organization;

(c) Pilot. The proposal will include a description of the pilot of essential learnings for the specialty endorsement including, but not limited to:

(i) Report on the diversity of pilot participants;

(ii) Description of how the pilot was aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under ~~((RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposers will describe how the pilot was aligned and responsive to the cultural competency standards published by the board))~~ WAC 181-85-204;

(iii) Approved specialty endorsement providers may consider work completed by an individual in a specialty endorsement pilot towards meeting the requirements for recommendation for a specialty endorsement.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-20-047, § 181-82A-210, filed 9/28/21, effective 10/29/21.]

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

WAC 181-82A-212 Proposal process for an organization to be approved to offer a specialty endorsement. Organizations seeking approval to offer a specialty endorsement follow a one-phase proposal process.

(1) **Organizational eligibility:**

(a) Organizations eligible to apply for approval as a specialty endorsement program provider include those eligible to serve as an in-service education agency under WAC 181-85-045.

(b) In order to offer a specialty endorsement, providers must maintain status as an approved in-service education agency or professional educator standards board approved educator preparation program provider.

(2) **Proposal process.** The prospective provider will submit a proposal that addresses all requirements published by the board including, but not limited to, the following:

(a) Description of how the organization will determine that a participant has met the requirements for the specialty endorsement, including the essential learnings;

(b) Statement of need for the provider offering the specialty endorsement, demonstrating response to educator, student, and community needs;

(c) Description of strategies and practices the organization will use to recruit and retain participants from historically excluded groups, including participants of color;

(d) Description of how the provider will implement the specialty endorsement offering in a manner aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under (~~RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposer will describe how the provider will implement the specialty endorsement offering in a manner aligned and responsive to the cultural competency standards published by the board~~) WAC 181-85-204;

(e) At least two letters of support from education or community-related organizations; and

(f) Organizational capacity to support participants in completing a specialty endorsement.

(3) **Reapproval, rescindment, and disapproval.**

(a) Specialty endorsement program providers approved under this section must complete a reapproval process every five years per a schedule posted by the professional educator standards board.

(b) The board, upon receipt of a serious complaint from any source, or upon its own initiative prompted by indications of the need for response, may require a provider to complete the reapproval process.

(c) Approved providers that voluntarily rescind their approval shall be permitted to continue to prepare and recommend for a specialty endorsement. Candidates who have been previously admitted to the program, provided that no recommendations for credentials will be accepted later than (~~twelve~~) 12 months following receipt of the formal letter to rescind provider approval. The provider will notify all currently enrolled candidates of the provider's change in status and notify candidates of the (~~twelve-month~~) 12-month timeline to complete requirements for recommendation.

(d) Disapproved specialty endorsement programs may reapply for approval by following the specialty endorsement approval process.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-20-047, § 181-82A-212, filed 9/28/21, effective 10/29/21.]

OTS-3605.1

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-85-033 Activity-based continuing education credit hours.

(1) **Eligibility period.** Individuals are eligible for the continuing education credit hours described in this section for up to seven years following the completion date of the indicated activity.

(2) **Professional growth team.**

(a) A professional growth team for the purpose of certificate renewal means a team comprised of the individual renewing the certificate and a minimum of one colleague, who holds a valid Washington state educator certificate under Title 181 WAC, or paraeducator certificate under Title 179 WAC, chosen by the individual.

(b) For consultation and collaboration, members of a professional growth team, excluding the candidate, are eligible for the equivalent of three continuing education credit hours. The team member may not receive more than the equivalent of six continuing education credit hours, as defined by this section, during the period beginning July 1st of one year and ending June 30th of the following year.

(3) **School accreditation site visit team.** A person holding a valid educational certificate under RCW 28A.410.010 is eligible for the equivalent of (~~ten~~) 10 continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of (~~twenty~~) 20 continuing education credit hours during a calendar year period.

(4) **Mentors and field experience supervisors.** Individuals officially designated as a mentor or field experience supervisor by a PESB approved educator preparation program, college or university, school district, educational service district, approved private school, tribal compact school, approved charter school, a state agency providing educational services to students, or the superintendent of public instruction, who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~thirty~~) 30 continuing education credit hours for service. The service must be as a mentor or field experience supervisor for teachers, administrators, educational staff associates, paraeducators, or interns or candidates in these roles. The individual may not receive more than the equivalent of (~~thirty~~) 30 continuing education credit hours under this subsection during a school year period.

(5) **National board certification from the National Board for Professional Teaching Standards (NBPTS):**

(a) Individuals who submitted at least one component of an initial NBPTS national board certification process in 2017 or earlier, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~forty-five~~) 45 continuing educa-

tion credit hours for submission of a complete portfolio of four components of the National Board for Professional Teaching Standards certification process. Completion of a national board certification process shall be defined as published by the professional educator standards board. Upon achieving national board certification, the individual is eligible for the equivalent of an additional (~~forty-five~~) 45 continuing education credit hours for a total of (~~ninety~~) 90 continuing education credit hours per national board certificate. Beginning January 1, 2022, all individuals submitting complete components as part of an initial NBPTS national board certification process are eligible for continuing education credit hours as described in (b) of this subsection.

(b) Individuals who first submitted a component of an initial NBPTS national board certification process in 2018 or later, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~fifty~~) 50 continuing education credit hours per submission of a complete national board component, for a total of (~~two hundred~~) 200 continuing education credit hours per submission of a complete national board certification portfolio. Completion of a national board component shall be defined as published by the professional educator standards board.

(c) Individuals who submit a complete NBPTS national board renewal portfolio in 2018 or later, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~two hundred~~) 200 continuing education credit hours. Completion of a national board renewal portfolio shall be defined as published by the professional educator standards board.

(d) Individuals who submit a complete NBPTS national board maintenance of certification portfolio, for a national board certificate with a five-year validity period, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of (~~one hundred~~) 100 continuing education credit hours. Completion of a national board maintenance of certification portfolio shall be defined as published by the professional educator standards board.

(6) **External assessment for professional certification.** Teachers who achieve the professional certification through the external assessment under WAC 181-79A-206 are eligible for the equivalent of (~~one hundred fifty~~) 150 continuing education credit hours.

(7) **First peoples' language, culture, and oral tribal traditions.** In-service training or continuing education in first peoples' language, culture, and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture, and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

(8) **Scorers for the Washington teacher performance assessment.** Individuals who serve as scorers for the Washington teacher performance assessment are eligible for the equivalent of (~~ten~~) 10 continuing education credit hours for each four assessments scored. However, an individual may not receive more than the equivalent of (~~twenty~~) 20 continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment are eligible for the equivalent of (~~ten~~) 10 continuing education credit hours.

(9) **Scorers for the Washington ProTeach Portfolio assessment.** Individuals who serve as scorers for the Washington ProTeach Portfolio

assessment are eligible for the equivalent of (~~ten~~) 10 continuing education credit hours for completing one full scoring session during a calendar year. An individual may not receive more than the equivalent of (~~twenty~~) 20 continuing education credit hours during a calendar year period. Individuals who receive initial training as scorers for the Washington ProTeach Portfolio assessment are eligible for the equivalent of (~~ten~~) 10 additional continuing education credit hours. Continuing education credit hours under this subsection are available through December 31, 2027.

(10) Professional growth plans.

(a) Educator individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet one or more of the following:

(i) Professional role standards under WAC 181-85-203, or paraeducator standards of practice under chapter 179-07 WAC;

(ii) Cultural competency, diversity, equity, and inclusion (CCDEI) standards under (~~RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the professional growth plan must be aligned to the cultural competency standards published by the board~~) WAC 181-85-204; or

(iii) Social emotional learning standards, benchmarks, and indicators under RCW 28A.410.270.

(b) Only one professional growth plan may be completed each year. Professional growth plans will be completed during the period beginning July 1st of one year and ending June 30th of the following year. Completion of the professional growth plan will include review by the professional growth team, as defined in subsection (2) of this section.

(c) Individuals may apply their focused evaluation professional growth activities from the evaluation system towards the professional growth plan for certificate renewal under RCW 28A.405.100 (12)(c)(vi).

(d) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan are eligible for (~~thirty~~) 30 continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan are eligible for (~~twenty-five~~) 25 continuing education credit hours.

(e) For educators holding multiple certificates as described in Title 179 or 181 WAC, a professional growth plan for teacher, administrator, education staff associate, or paraeducator shall meet the requirements of a professional growth plan for all certificates held by an individual.

(11) Paraeducator certificates.

(a) Individuals who complete the paraeducator fundamental course of study as described in chapter 179-09 WAC are eligible for the number of continuing education credit hours completed up to (~~twenty-eight~~) 28 continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(b) Individuals who complete the course work for the English language learner subject matter certificate as described in chapter 179-13 WAC are eligible for the number of continuing education credit hours completed up to (~~twenty~~) 20 continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(c) Individuals who complete the course work for the special education subject matter certificate as described in chapter 179-15 WAC are eligible for the number of continuing education credit hours completed up to ~~((twenty))~~ 20 continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(12) **Government-to-government relationships with federally recognized tribes.** Individuals who complete the professional learning on government-to-government relationships with federally recognized tribes as described under WAC 181-79A-244 are eligible for the number of continuing education credit hours completed up to five continuing education credit hours every five years unless they are issued these continuing education credit hours by a state approved in-service education agency.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-85-033, filed 7/16/21, effective 8/16/21; WSR 20-19-023, § 181-85-033, filed 9/4/20, effective 10/5/20. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-111, § 181-85-033, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-17-015, § 181-85-033, filed 8/2/18, effective 9/2/18. Statutory Authority: Chapter 28A.410 RCW. WSR 16-24-024, § 181-85-033, filed 11/29/16, effective 12/30/16. Statutory Authority: RCW 28A.410.210. WSR 12-17-039, § 181-85-033, filed 8/7/12, effective 9/7/12; WSR 12-04-031, § 181-85-033, filed 1/26/12, effective 2/26/12; WSR 11-04-048, § 181-85-033, filed 1/25/11, effective 2/25/11; WSR 10-20-079, § 181-85-033, filed 9/29/10, effective 10/30/10; WSR 08-03-101, § 181-85-033, filed 1/20/08, effective 2/20/08; WSR 06-14-010, § 181-85-033, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-85-033, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-19-104, § 180-85-033, filed 9/20/05, effective 10/21/05; WSR 04-20-094, § 180-85-033, filed 10/5/04, effective 11/5/04; WSR 02-18-050, § 180-85-033, filed 8/28/02, effective 9/28/02.]

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-85-202 Content standards for continuing education credit hours. The content and objectives of in-service continuing education credit hours must relate to one or more of the following:

- (1) Professional role standards under WAC 181-85-203;
- (2) Paraeducator standards of practice under chapter 179-07 WAC;
- (3) Cultural competency, diversity, equity, and inclusion (CCDEI) standards under ~~((RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the content must relate to the cultural competency standards published by the board))~~ WAC 181-85-204; or
- (4) Social emotional learning standards, benchmarks, and indicators under RCW 28A.410.270.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-85-202, filed 7/16/21, effective 8/16/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-85-202, filed 7/24/19, effective 8/24/19.]

NEW SECTION

WAC 181-85-204 Cultural competency, diversity, equity, and inclusion standards. The cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260 are as adopted and published by the professional educator standards board.

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WSR 22-05-087
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed February 15, 2022, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-111.

Title of Rule and Other Identifying Information: Chapter 388-847 WAC, Stabilization, assessment, and intervention facility (SAIF).

Hearing Location(s): On March 22, 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/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see DSHS website for the most current information.

Date of Intended Adoption: Not earlier than March 23, 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 March 22, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov [tenczsa@dshs.wa.gov], by 5:00 p.m. on March 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules establish eligibility criteria for admission to SAIF, and other service delivery requirements.

Reasons Supporting Proposal: These rules are necessary to establish regulations for developmental disabilities administration's (DDA) new SAIF providers.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: 2019-2021 operating budget (ESHB 1109, section 203(j)), chapter 415, Laws of 2019.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: AnnMarie DeGroot, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1584.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1575, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses. The SAIF program is a state-operated program.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses, so a small business economic impact statement is not required.

February 14, 2022

Katherine I. Vasquez
Rules Coordinator

SHS-4903.5

Chapter 388-847 WAC
STABILIZATION, ASSESSMENT, AND INTERVENTION FACILITY

DEFINITIONS

NEW SECTION

WAC 388-847-0010 What definitions apply to this chapter? "**Acute care setting**" means a hospital, an evaluation and treatment (ENT) facility, or a psychiatric hospital.

"**Behavior support plan**" means a habilitation plan written by the stabilization, assessment, and intervention facility (SAIF) addressing target behaviors that do not meet the level of medical necessity as defined in WAC 182-500-0070, based on lack of diagnosis, or impact severity affecting a medical or behavioral health condition, for which the client receives professional treatment and is not eligible for state plan services.

"**Case manager**" means the developmental disabilities administration case resource manager or social worker assigned to a client.

"**Certification**" means a process used by the department to evaluate SAIF's compliance with the requirements of this chapter.

"**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who has been determined eligible by DDA to receive services under chapter 388-823 WAC.

"**DDA**" means the developmental disabilities administration.

"**DSHS**" or "**the department**" means the state of Washington department of social and health services and its employees and authorized agents.

"**Function**" means what a client gains, avoids, or satisfies by using a behavior.

"**Functional assessment**" means a process for identifying target behaviors and their functions by observing a client, reviewing information about the client, and collecting data to:

- Determine relationships between antecedents and behaviors;
- Identify reinforcing consequences; and
- Form a hypothesis about why a behavior continues to be used.

"**Legal representative**" means a parent of a client if the client is under age 18, a court-appointed guardian if a decision is within

the scope of the guardianship order, or any other person authorized by law to act for the client.

"Medication administration" means the direct application of a medication or device by ingestion, inhalation, injection, or any other means, whether self-administered by a client, administered by a parent or guardian for a minor, or administered by an authorized healthcare provider.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a client in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

"Person-centered service plan" means a document that identifies a client's goals and assessed health and welfare needs. The person-centered service plan also indicates the paid services and natural supports that will assist the client to achieve their goals and address their assessed needs.

"Residential service provider" means an entity that will support the client after discharge from SAIF, such as a supported living agency or a facility-based community residential provider.

"Support" means assistance a client receives based on needs identified in the person-centered support plan.

"Target behavior" means a specific, observable, and measurable behavior that requires modification or replacement.

"Individualized team" means the group of people who work together to provide formal and informal supports to a client. A typical team includes the client, the client's family and legal representative, SAIF staff, the client's case resource manager, managed care organization care coordinators, and any other service providers working with the client and family.

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PURPOSE

NEW SECTION

WAC 388-847-0020 What service does a stabilization, assessment, and intervention facility provider deliver? A stabilization, assessment, and intervention facility (SAIF) provider delivers stabilization services under chapter 388-845 WAC for up to 90 days to clients with complex behavioral health needs. Each community-based facility provides 24-hour support, including support for target behaviors, for up to six clients. SAIF is a short-term residential facility to prevent institutionalization or to facilitate deinstitutionalization.

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CLIENT ELIGIBILITY

NEW SECTION

WAC 388-847-0030 Who is eligible for admission to SAIF? A person is eligible for admission to a stabilization, assessment, and intervention facility (SAIF) if the person:

- (1) Is age 18 or older;
- (2) Is eligible for DDA services under chapter 388-823 WAC;
- (3) Is eligible for enrollment on a home and community-based services waiver under chapter 388-845 WAC;
- (4) Is eligible for stabilization services under WAC 388-845-1100;
- (5) Is eligible for discharge from an acute care setting or is at risk of admission to an acute care setting for nonmedical reasons;
- (6) Has an identified residential service provider;
- (7) Does not pose a risk to the health or safety of SAIF staff or other clients supported by SAIF and SAIF can safely meet the client's needs within available funding; and
- (8) Has frequent stabilization, assessment, and intervention needs as indicated by:
 - (a) A history of hospital admissions for behavioral health stabilization in the last year; or
 - (b) The regional clinical team's recommendation that behavioral health destabilization is likely to occur.

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NEW SECTION

WAC 388-847-0040 How does SAIF determine whether it can safely meet a client's needs? To determine whether it can safely meet a client's needs, the stabilization, assessment, and intervention facility reviews client information, such as:

- (1) The client's referral packet;
- (2) Interviews with the client or collateral contacts; and
- (3) Composition of clients currently supported by the provider.

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SERVICE DELIVERYNEW SECTION

WAC 388-847-0050 What does SAIF provide? (1) The stabilization, assessment, and intervention facility (SAIF) provides the following individualized services:

- (a) Functional assessment under WAC 388-847-0080;
 - (b) The creation and implementation of a behavior support plan under WAC 388-847-0090;
 - (c) Services assigned to SAIF in the client's person-centered service plan; and
 - (d) Medication administration and medication assistance as needed.
- (2) SAIF must provide the following to clients:
- (a) Three meals per day plus snacks;
 - (b) Toiletries and personal care items;
 - (c) Bedding and towels;
 - (d) Access to laundry facilities;
 - (e) Access to a telephone;
 - (f) Opportunities for accessing the community; and
 - (g) Transportation to necessary appointments or services.

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NEW SECTION

WAC 388-847-0060 What healthcare support does SAIF provide? The stabilization, assessment, and intervention facility must provide healthcare support by:

- (1) If necessary, providing medication assistance under RCW 69.41.010;
- (2) If necessary, performing delegated nursing tasks and medication administration under WAC 246-840-910 through WAC 246-840-970;
- (3) Supporting the client to understand and follow their healthcare professional's instructions, referrals, and medication directions; and
- (4) Assisting the client with medically necessary healthcare appointments, including scheduling, transporting, and participating when necessary.

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NEW SECTION

WAC 388-847-0070 How long may a client receive services from the SAIF provider? A client may receive services from a stabilization, assessment, and intervention facility for up to 90 consecutive days.

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NEW SECTION

WAC 388-847-0080 When is a functional assessment required? (1) Each client supported by a stabilization, assessment, and intervention facility (SAIF) must receive a functional assessment for the target behavior that prevents the client from receiving residential services.

- (2) The client's functional assessment must:
- (a) Be based on two or more of the following:
 - (i) Direct observation;
 - (ii) An interview with anyone who has personal knowledge of the client;
 - (iii) A questionnaire; or
 - (iv) A record review.
 - (b) Describe:
 - (i) The target behavior;
 - (ii) The target behavior's apparent function; and
 - (iii) Client history and antecedents pertinent to the target behavior.
 - (c) Exist:
 - (i) In draft form no more than seven days after the client's admission to SAIF; and
 - (ii) In final form no more than 14 days after the client's admission to SAIF.
- (3) A draft functional assessment must define the target behavior and its apparent function.

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NEW SECTION

WAC 388-847-0090 What requirements must a behavior support plan meet? (1) Each client supported by a stabilization, assessment, and intervention facility (SAIF) must have a behavior support plan that is based on the functional assessment in WAC 388-847-0080.

- (2) The client's behavior support plan must describe:
- (a) The target behavior;
 - (b) Actions that may be taken to prevent the target behavior;
 - (c) Actions that may be taken in response to the target behavior;
 - (d) Actions that may be taken if the target behavior increases in frequency, duration, intensity, or impact;
 - (e) The replacement behavior that matches the target behavior's function;
 - (f) How to teach the replacement behavior;
 - (g) How to respond to the replacement behavior; and

(h) Benchmarks to evaluate the behavior support plan's effectiveness.

(3) SAIF may use an existing behavior support plan until a new plan is finalized.

(4) SAIF must collect data on the target behavior's:

(a) Frequency;

(b) Duration; and

(c) Impact.

(5) SAIF must collect data on the replacement behavior's:

(a) Frequency;

(b) Duration; and

(c) Impact.

(6) SAIF must analyze the data collected under subsections (4) and (5) of this section at least every 30 days to determine the effectiveness of the behavior support plan.

(7) If the analysis under subsection (6) of this section indicates the target behavior is not decreasing in frequency, duration, or impact, SAIF must:

(a) Revise the behavior support plan; or

(b) Document the reason revising the behavior support plan is not indicated.

[]

DISCHARGE

NEW SECTION

WAC 388-847-0100 What must SAIF provide to a client's residential provider upon discharge? Upon a client's discharge, the stabilization, assessment, and intervention facility must provide:

(1) The client's behavior support plan;

(2) The client's functional assessment;

(3) A list of the client's medications; and

(4) The client's property record.

[]

TERMINATION

NEW SECTION

WAC 388-847-0110 When may SAIF provide a termination notice prior to discharge and to whom must SAIF send the notice? (1) The stabilization, assessment, and intervention facility (SAIF) may provide termination notice prior to discharge if it determines and documents:

- (a) The client's behavior jeopardizes the client's health or safety; or
 - (b) The client's behavior jeopardizes the health or safety of staff or other clients SAIF supports.
- (2) The notice of termination must include:
- (a) The reason for termination; and
 - (b) The effective date of termination.
- (3) SAIF must provide the notice at least 72 hours before the effective date of the termination. SAIF must send the notice to:
- (a) The client;
 - (b) The client's legal representative or necessary supplemental accommodation;
 - (c) The client's DDA case manager; and
 - (d) The SAIF program manager.

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PROVIDER QUALIFICATIONSNEW SECTION

WAC 388-847-0120 Who is qualified to work in SAIF? To work in a stabilization, assessment, and intervention facility, a person must:

- (1) Be age 18 or older;
- (2) Have a high school diploma or GED;
- (3) Have a valid food worker's card under chapter 246-217 WAC;
- (4) Have a nondisqualifying DSHS background check result under chapter 388-825 WAC at least every three years, or more frequently if requested by DSHS;
- (5) Complete the training required under chapter 388-829 WAC; and
- (6) Comply with nurse delegation training requirements under chapter 246-888 WAC if the person provides medication administration to a client.

[]

MEDICATIONSNEW SECTION

WAC 388-847-0130 What must SAIF do if a client refuses a prescribed medication? If a client refuses a prescribed medication, the stabilization, assessment, and intervention facility must:

- (1) Document the refusal, including the time, date, and medication refused;
- (2) Inform the client of the benefit of the medication;
- (3) Consult a pharmacist or licensed medical provider with prescription authority to determine if the medication refusal could significantly harm the client;
- (4) If recommended, continue to offer the medication following consultation in subsection (3) of this section; and
- (5) Inform the client's legal representative.

[]

NEW SECTION

WAC 388-847-0140 How must SAIF store medication? (1) The stabilization, assessment, and intervention facility (SAIF) must store a client's medication:

- (a) In a locked place, such as a locked room or locked box;
 - (b) Separate from food and toxic chemicals;
 - (c) Under proper conditions for sanitation, temperature, and ventilation; and
 - (d) In the original medication container with the pharmacist-prepared or manufacturer's label, which must include the:
 - (i) Name of the client for whom the medication is prescribed;
 - (ii) Name of the medication; and
 - (iii) Dosage and frequency.
- (2) SAIF may store a client's medication in a medication organizer if the medication organizer was prepared by a pharmacist or registered nurse.

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NEW SECTION

WAC 388-847-0150 How must SAIF dispose of medications? (1) The stabilization, assessment, and intervention facility (SAIF) must dispose of all client medications that are discontinued, expired, or replaced by another.

- (2) When disposing client medications, SAIF must list the:
 - (a) Medication;

- (b) Amount; and
- (c) Date that it was disposed.
- (3) Two people, one of whom may be the client, must verify the disposal by signature.

[]

FACILITY REQUIREMENTS

NEW SECTION

WAC 388-847-0160 What are the physical requirements for a SAIF?

- (1) The stabilization, assessment, and intervention facility's (SAIF's) fixtures, furnishings, exterior, and interior, including the client's bedroom, must be maintained in a safe manner and free from hazards.
- (2) Each SAIF client's bedroom must have:
 - (a) A bed, mattress, pillow, and linens;
 - (b) A closet or other place for storing personal items;
 - (c) A window or door that allows for emergency exit;
 - (d) Unrestricted access to common areas; and
 - (e) Space for a mobility aid, such as a wheelchair or walker.

[]

SAFETY PROCEDURES

NEW SECTION

WAC 388-847-0170 What must SAIF do to prepare for emergencies?

- (1) The stabilization, assessment, and intervention facility (SAIF) must develop an emergency response plan.
- (2) SAIF must complete a fire drill with clients at least once per month and document completion of the drill.

[]

NEW SECTION

WAC 388-847-0180 What water temperature safety measures must be met? (1) The stabilization, assessment, and intervention (SAIF) must regulate the facility's water temperature no higher than 120 degrees Fahrenheit.

(2) SAIF must complete and document monthly water temperature checks.

[]

NEW SECTION

WAC 388-847-0190 What fire safety requirements must be met? (1) The stabilization, assessment, and intervention facility (SAIF) must be located in an area with public fire protection.

(2) SAIF must have a working smoke detector and carbon monoxide detector installed:

- (a) In every client's bedroom; and
- (b) On every floor of the facility.

(3) Each smoke detector and carbon monoxide detector must:

- (a) Be in working condition; and
- (b) Address the needs of clients who are deaf or hard of hearing.

(4) SAIF must have fire extinguishers located throughout the facility as prescribed by the local fire marshal.

(5) SAIF must have the type and number of fire extinguishers as prescribed by the local fire marshal.

(6) Each fire extinguisher must be:

- (a) Installed according to manufacturer recommendations;
- (b) Annually replaced or inspected and serviced;
- (c) In working condition; and
- (d) Readily available for use.

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NEW SECTION

WAC 388-847-0200 Must SAIF secure cleaning supplies and other potentially hazardous substances? The stabilization, assessment, and intervention facility must have an area inaccessible to clients for storing cleaning supplies, flammables, and other combustible materials.

[]

RETENTION OF RECORDS

NEW SECTION

WAC 388-847-0210 What records must SAIF retain? (1) The stabilization, assessment, and intervention facility (SAIF) must keep the following information in a client's record:

- (a) The client's name, address, and Social Security number;
 - (b) The name, address, and telephone number of the client's legal representative;
 - (c) Progress notes and incident reports involving the client;
 - (d) The client's behavior support plan;
 - (e) Copies of current medical and psychiatric diagnoses;
 - (f) A list of the client's medications and indications for medications used;
 - (g) Allergies;
 - (h) Portable orders for life-sustaining treatment (if established); and
 - (i) A list of the client's current medical, behavioral, and hospital providers.
- (2) SAIF must keep the following administrative documents:
- (a) Employee training records;
 - (b) Fire drill records; and
 - (c) An emergency response plan.

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NEW SECTION

WAC 388-847-0220 How long must SAIF keep client records? The stabilization, assessment, and intervention facility must keep a client's records for six years from discharge date.

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NEW SECTION

- WAC 388-847-0230 Must SAIF keep a record of a client's property?**
- (1) The stabilization, assessment, and intervention facility (SAIF) must maintain a property record for each client.
- (2) The property record must include:
- (a) A descriptive list of items with a fair market value of \$75.00 or more that the client owned when entering the program;
 - (b) A descriptive list of items with an original purchase price of \$75.00 or more that the client acquired while residing at SAIF; and
 - (c) A date, explanation, and verification of notification to the client and the client's legal representative for any item with a fair

market value of \$75.00 or more that is removed from the client's property record.

[]

REFUSAL OF SERVICES

NEW SECTION

WAC 388-847-0240 When must SAIF document a client's choice not to participate in supports? (1) The stabilization, assessment, and intervention facility (SAIF) provider must document a client's choice not to participate in:

- (a) Monthly emergency fire drills; or
- (b) Healthcare support as described WAC 388-847-0060.

(2) If a client chooses not to participate in a fire drill or healthcare support, SAIF must document:

- (a) Concerns expressed by the client in regard to not participating;
- (b) Events related to the client's choice not to participate;
- (c) That the client was informed of the benefits of the fire drill or healthcare support and the possible risks of choosing not to participate;
- (d) SAIF's efforts to provide or acquire the support for the client; and
- (e) Health or safety risks posed by the client's choice not to participate.

(3) If a client's health and safety is adversely affected by their choice not to participate in the fire drill or healthcare support, SAIF must send a written notice to the client's case manager, and legal representative if the client has one. The notice must:

- (a) Describe SAIF's efforts to provide or acquire the support for the client; and
- (b) Describe health or safety risks posed by the client's choice not to participate.

(4) SAIF must discuss the client's lack of participation during individualized team meetings.

[]

INFECTION CONTROLNEW SECTION

WAC 388-847-0250 What infection control practices must SAIF implement? (1) The stabilization, assessment, and intervention facility (SAIF) must implement occupational safety and health administration (OSHA) universal precautions to limit the spread of infections when:

- (a) Providing client services;
- (b) Cleaning the facility;
- (c) Washing laundry; and
- (d) Managing infectious waste.

(2) SAIF must:

- (a) Have an infection control policy;
- (b) Provide staff with the supplies necessary for limiting the spread of infections;
- (c) Restrict a staff person's contact with clients when the staff person has an illness that is likely to spread in the course of service delivery; and
- (d) Report communicable diseases as required under chapter 246-100 WAC.

[]

CERTIFICATION EVALUATIONNEW SECTION

WAC 388-847-0260 Must SAIF be certified? (1) The stabilization, assessment, and intervention facility (SAIF) must be certified by DDA no more than 90 days after the first date of service delivery.

- (2) DDA certifies SAIF through a certification evaluation.
- (3) DDA-contracted evaluators conduct the certification evaluations.
- (4) SAIF must participate in a certification evaluation at least once every 12 months.

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WSR 22-05-088
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed February 15, 2022, 3:30 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend agency Regulation I, Section 7.07 (Operating Permit Fees).

Hearing Location(s): On March 24, 2022, at 8:45 a.m. The public hearing will be conducted using Zoom, and can be accessed using the following information: Join Zoom meeting <https://us06web.zoom.us/j/88162923470?pwd=cU00QXAwNWV1Yml4ZEp6ME95ZHZiZz09>, Meeting ID 881 6292 3470, Passcode 010424, Call-in 877 853 5247 US Toll-free.

Date of Intended Adoption: April 28, 2022.

Submit Written Comments to: Betsy Wheelock, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email RegUpdates@psccleanair.gov, fax 206-343-7522, by March 31, 2022.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email RegUpdates@psccleanair.gov, by March 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The operating permit program fees, like the other fee programs of the Puget Sound Clean Air Agency (agency) (Registration, Notice of Construction, and Asbestos), are designed to recover the costs implementing and administering the program. The last significant changes to the operating permit fee schedule in Regulation I, Section 7.07 were made in 2012. The current proposed changes are intended to adjust fees to keep the revenues in balance with the level of effort to complete the compliance work associated with the operating permit program. While the revenue and expenses for the operating permit program have been roughly balanced for most of the past 10 years, the increasing costs to the program and increasing level of effort for some types of work by the agency for certain aspects of the operating permit program need to be addressed through a revised fee schedule to ensure the agency does not regularly reach a deficit condition.

The proposed amendments to the operating permit fee schedule include both cost increases for each regulated category at approximately 25 percent. The consumer price index increase since the last operating permit fee increase is 28 percent.

Additionally, the proposed changes include an update to the North American Industrial Classification System (NAICS) codes referenced in the regulation to reflect the series that the agency currently uses and the elimination of a NAICS code no longer published in the NAICS system manual.

Reasons Supporting Proposal: The long-standing financial policy of the board of directors is that operating permit fees support the costs of the compliance programs. Costs to administer the program have increased in the past 10 years since the last operating permit fee increase.

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

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: John Dawson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4060; Implementation and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

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 local air agencies, per 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 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 set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

February 15, 2022
 Cynthia Wang
 Executive Director

SECTION 7.07 OPERATING PERMIT FEES Adopted 10/28/93 (766)

Revised 09/08/94 (798), 09/14/95 (821), 09/12/96 (839), 09/11/97 (856), 09/10/98 (871), 09/09/99 (894), 07/13/00 (925), 06/14/01 (946), 10/11/01 (957), 05/23/02 (970), 05/22/03 (995), 07/22/04 (1031), 05/22/08 (1119), 05/24/12 (1244), 09/26/13 (1286)

(a) The Agency shall assess annual operating permit fees as set forth in Section 7.07(b) below to cover the cost of administering the operating permit program.

(b) Upon assessment by the Agency, the following annual operating permit fees are due and payable within 45 days of the invoice date. They shall be deemed delinquent if not fully paid within 90 days of the date of the invoice and will be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$((~~6,500~~) 8,125). In addition, 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 may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter ((~~70.94~~)) 70A.15 RCW).

(1) Sources in the following North American Industry Classification System (NAICS) codes (*North American Industry Classification System Manual*, U.S. Executive Office of the President, Office of Management and Budget, ((~~1997~~)) 2012), or sources subsequently determined by the control officer to be assigned to either Section 7.07 (b) (1) (i) or 7.07 (b) (1) (ii) shall be subject to the following facility fees:

(i) Operating permit sources with the following NAICS codes:

NAICS	NAICS Description	Fee
221112	Fossil Fuel Electric Power Generation	
324110	Petroleum Refineries	
327213	Glass Container Manufacturing	

NAICS	NAICS Description Fee
327310	Cement Manufacturing
331110	Iron and Steel Mills and Ferroalloy Manufacturing
336411	Aircraft Manufacturing
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing
928110	National Security
 \$((57,200)) <u>71,500</u>

(ii) Operating permit sources with the following NAICS codes:

NAICS	NAICS Description Fee
311119	Other Animal Food Manufacturing
311812	Commercial Bakeries
321912	Cut Stock, Resawing Lumber, and Planing
321918	Other Millwork (including Flooring)
321999	All Other Miscellaneous Wood Product Manufacturing
322220	Paper Bag and Coated and Treated Paper Manufacturing
326140	Polystyrene Foam Product Manufacturing
((327121))	((Brick and Structural Clay Tile Manufacturing))
332996	Fabricated Pipe and Pipe Fitting Manufacturing
 \$((14,300)) <u>17,875</u>

(iii) Operating permit sources with NAICS codes other than listed above. \$((28,600)) 35,750

(2) Additional emission rate fees shall be paid in addition to the annual operating permit fees of Section 7.07 (b) (1):

\$30 for each ton of CO reported in the previous calendar year,

and

\$60 for each ton of NO_x reported in the previous calendar year,

and

\$60 for each ton of PM₁₀ reported in the previous calendar year,

and

\$60 for each ton of SO_x reported in the previous calendar year,

and

\$60 for each ton of VOC reported in the previous calendar year,

and

\$60 for each ton of HAP reported in the previous calendar year.

(c) In addition to the fees under Sections 7.07 (b) (1) and (b) (2) above, the Agency shall, on a source-by-source basis, assess the following fees:

(1) \$500 for administrative permit amendments [WAC 173-401-720], and

(2) for minor permit modifications [WAC 173-401-725 (2) and (3)], a fee equal to 10% of the annual operating permit fee, not to exceed \$ ((6,500)) 8,125, and

(3) for the original issuance [WAC 173-401-700], significant modification [WAC 173-401-725(4)], reopening for cause [WAC 173-401-730], or renewal [WAC 173-401-710] of an operating permit, a fee equal to 20% of the annual operating permit fee, not to exceed \$ ((13,000)) 16,250, and

(4) to cover the costs of public involvement under WAC 173-401-800, and

(5) to cover the costs incurred by the Washington State Department of Health in enforcing 40 CFR Part 61, Subpart I and chapter 246-247 WAC.

(d) In addition to the fees described under Sections 7.07 (b) and (c) above, the Agency shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology under chapter 173-401 WAC to cover the Department of Ecology's program development and oversight costs.

(e) Continued payment to the Agency of the annual operating permit fee maintains the operating permit and the status of the source as an operating facility.

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

WSR 22-05-089

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed February 15, 2022, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-027.

Title of Rule and Other Identifying Information: WAC 246-945-056 Schedule V. The pharmacy quality assurance commission (commission) is proposing to amend WAC 246-945-056 to delete Epidiolex from Schedule V controlled substances in Washington state in line with changes in Uniform Controlled Substances Act and in response to a rule-making petition.

Hearing Location(s): On March 25, 2022, at 9:15 a.m. In response to the coronavirus disease 2019 (COVID-19) pandemic, the commission 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.

To access the meeting, please register for this meeting and join from your computer, tablet, or smartphone. Please register for the PQAC business meeting on March 25, 2022, 9:00 a.m. PST, at <https://attendee.gotowebinar.com/register/4623500690320973325>. After registering, you will receive a confirmation email containing information about joining the webinar.

Participants can use their phone or computer mic and speakers (VoIP). United States +1-631-992-3221, Audio Pin - Attendee - muted 704-709-411.

Date of Intended Adoption: March 25, 2022.

Submit Written Comments to: Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by March 11, 2022.

Assistance for Persons with Disabilities: Contact Joshua Munroe, phone 360-236-2987, TTY 711, email PharmacyRules@doh.wa.gov, by March 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Epidiolex is an FDA-approved cannabidiol with less than 0.3 percent tetrahydrocannabinol (THC), used to help treat some seizure disorders. The Uniform Controlled Substances Act (chapter 69.50 RCW) declassifies hemp products with less than 0.3 percent THC from the definition of a controlled substance because hemp was removed from the definition of marijuana per RCW 15.140.030(6). The commission received a petition from interested parties to update the rules to reflect changes caused by the Uniform Controlled Substances Act. In response to the rule-making petition and the goal of reducing superfluous pressure on the health system during the ongoing coronavirus disease 2019 (COVID-19) pandemic, the commission implemented emergency rules to delete Epidiolex from the list of Schedule V controlled substances beginning May 20, 2020, under WSR 20-11-078, and has retained the emergency rule since then. This proposal is intended to permanently delete Epidiolex from the list of Schedule V controlled substances in WAC 246-945-056 consistent with the emergency rule. The current emergency rule under WSR 21-22-065 was filed on October 29, 2021.

Reasons Supporting Proposal: In August 2020, the Drug Enforcement Administration (DEA) completed rule making formally descheduling Epi-

diolox federally. Per RCW 69.50.201, the commission has the duty to similarly control Epidiolex as DEA has, therefore the commission has the duty to remove Epidiolex from the Schedule V list.

This proposal is in response to a rule-making petition, but it also aligns Washington state rule with the federal change.

Statutory Authority for Adoption: RCW 18.64.005, 69.50.201.

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

Name of Proponent: Washington state pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joshua Munroe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2987; Enforcement: Margaret Holm, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4731.

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 commission did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules, the content of which is explicitly and specifically dictated by statute. RCW 69.50.201 requires the commission to deschedule Epidiolex the same as was done federally.

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.

Explanation of exemptions: Epidiolex is no longer considered a controlled substance by the federal government. Per RCW 69.50.201, the commission has the duty to deschedule Epidiolex in Washington state as well.

February 15, 2022
Teri Ferreira, RPh
Pharmacy Quality Assurance Chair

OTS-2392.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-056 Schedule V. The commission finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-945-055 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having

a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester].

~~((3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methyl-phenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.))~~

[Statutory Authority: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590. WSR 20-12-072, § 246-945-056, filed 6/1/20, effective 7/1/20.]

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

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

WSR 22-05-092
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-06—Filed February 16, 2022, 7:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-039 on October 13, 2020.

Title of Rule and Other Identifying Information: WAC 220-440-260 Wolf-livestock conflict deterrence in chronic conflict areas and 220-440-080 Killing wolves attacking domestic animals.

Hearing Location(s): On April 8, 2022, at 8:00 a.m., webinar. This meeting will take place by webinar. The public may participate in the meeting. Registration is required to testify at the public hearing. Registration deadlines and registration forms are available at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267.

Date of Intended Adoption: May 13, 2022.

Submit Written Comments to: Julia Smith, P.O. Box 43200, Olympia, WA 98504, email WolfConflictDeterrence102@PublicInput.com, phone voicemail comments 855-925-2801, project code 3861, website <https://publicinput.com/WolfConflictDeterrence102>, SEPA public comment SEPAWolfConflictDeterrence@PublicInput.com, SEPA voicemail comment 855-925-2801, project code 6659, rule-making website <https://wdfw.wa.gov/about/regulations/development/wolf-livestock-conflict-deterrence>, by April 11, 2022.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov, <https://wdfw.wa.gov/accessibility/requests-accommodation>, by April 9, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposals are in response to a decision by Governor Jay Inslee in September 2020 to grant a petition for rule making directed to the Washington fish and wildlife commission relating to wolf management with the goal of instituting practices that will avoid the repeated loss of wolves and livestock in Washington. Accordingly, Washington department of fish and wildlife (WDFW) is proposing new WAC 220-440-260 and amendments to current WAC 220-440-080.

Under the umbrella of the 2011 Wolf Conservation and Management Plan goals, the purpose of amending a rule and adopting a new rule related to wolf management in chapter 220-440 WAC is to:

(1) Establish procedure for identifying WDFW expectations for use [of] nonlethal tools to mitigate wolf-livestock conflict in areas of chronic conflict, while recognizing the use of nonlethal tools is encouraged statewide; and

(2) Establish criteria for the use of WDFW's lethal removal authority in areas of chronic wolf-livestock conflict.

WDFW focuses on proactive use of nonlethal deterrents to minimize wolf-livestock conflict and considers lethal removal as a last resort when those tools have not mitigated conflict. Although WDFW promotes and encourages the use of nonlethal measures to deter wolf-livestock conflict through nonbinding guidance, current law does not explicitly require implementation of nonlethal conflict deterrence measures appropriate for the conflict scenario prior to agency authorization of lethal removal of wolves. Proposed changes to WAC 220-440-080, if

adopted, would require that, to authorize lethal removal of wolves, the WDFW director (or WDFW staff designee) would need to confirm an owner of domestic animals has proactively implemented appropriate non-lethal conflict deterrence measures.

The proposal would also create a new rule (WAC 220-440-260) that directs WDFW staff to author conflict mitigation plans. These plans would establish area-specific criteria for the use of nonlethal and lethal measures to mitigate wolf-livestock conflict in areas of chronic conflict (pack territories (or a portion thereof) where wolf depredations of livestock occurred and lethal removal of wolves was authorized in two of the last three years). WDFW would author the conflict mitigation plan(s) in consultation with willing, affected livestock producers, as well as federal, state, and tribal agencies that manage lands and/or wildlife in the designated chronic conflict area. The plan would specify nonlethal deterrence measures that are appropriate for the chronic conflict area according to the professional judgment of WDFW staff. Additionally, the rule would outline criteria for lethal removal of wolves in chronic conflict areas, as determined on a case-by-case basis.

The proposed WAC changes attached to this notice do not include provisions specific to range riding. Through this CR-102 notice, WDFW is providing and soliciting comment on optional additional language for inclusion in the rule (in subsection (2) of proposed WAC 220-440-260, immediately preceding the final sentence of subsection (2)) for the commission's consideration to address the use of "range riding," as follows:

"If range riding (e.g., livestock husbandry, active monitoring of livestock) is a tool best suited to deter wolf-livestock conflict in a chronic conflict area according to the professional judgment of WDFW staff, it will be included in the conflict mitigation plan with the expectation that documentation of range riding efforts as specified in the conflict mitigation plan will be provided to WDFW on a regular basis."

Reasons Supporting Proposal: **1. Proposed changes to WAC**

220-440-080: WDFW has a clear record of promoting, prioritizing, and funding nonlethal wolf-livestock conflict deterrence measures (more than 80 percent of the budget for wolf-livestock conflict is spent on nonlethal approaches). Proposed changes to WAC 220-440-080 would align the code with the agency's commitment to nonlethal conflict mitigation strategies.

2. Proposal to create WAC 220-440-260: WDFW's recovery efforts for wolves are guided principally by the 2011 Wolf Conservation and Management Plan (wolf plan) and the 2017 Wolf-Livestock Interaction Protocol (protocol), nonbinding guidance to address the use of nonlethal conflict deterrents and wolf lethal removals. These management guidelines have resulted in some of the lowest levels of documented livestock depredation and subsequent wolf removals in the nation. Although the implementation of the wolf plan and protocol have resulted in successful wolf-livestock conflict mitigation in most occupied wolf territory, no document or rule can or does account for every scenario in which WDFW must exercise discretion.

The proposal creating WAC 220-440-260 aims to address the challenge of areas that have experienced recurrent and significant levels of livestock depredation and subsequent wolf removals. The wolf plan and protocol do not provide guidance in a situation where chronic depredations and lethal removals have occurred in the same wolf pack territory for multiple consecutive years.

Although wolf-livestock conflict scenarios are notoriously difficult to predict, multiple studies show that depredation risk may increase after a wolf pack has learned to prey on livestock and there is a predictable pattern of recurrence of depredations in areas with prior conflicts. This proposal, if adopted, would focus limited WDFW staff time, livestock producer time, and resources to areas where the most livestock and wolf loss has occurred in the state, with the goal of instituting practices that will avoid the repeated loss of wolves and livestock in Washington.

3. Optional additional language for inclusion in subsection (2) of proposed WAC 220-440-260 addressing range riding: As noted above, the proposed WAC changes do not include "range riding" specific provisions. The rationale for not including "range riding" provisions in the proposed WAC changes attached to this CR-102 notice is primarily based on the fact that "range riding" is a livestock husbandry and monitoring tool (e.g., keeping track of livestock, grouping livestock, removing sick and/or injured livestock from the range, securing attractants), and it is not wolf (or other predator) focused. WDFW's enabling statutes (Title 77 RCW) authorize broad discretion to manage wildlife. Because the statutes do not authorize WDFW to mandate, regulate, or enforce the management of livestock operations or animal husbandry practices, WDFW is not in the position to mandate or enforce range riding as a tool in rule. In addition, assessment of when and how range riding may be effective in monitoring a livestock herd is highly fact-specific and is not conducive to uniform definition in rule (i.e., quality range riding activities differ based on multiple and varying factors). Therefore, agency staff drafting the proposed rule do not recommend adoption of the optional additional "range riding" language at this time.

The additional "range riding" language in the preceding section is provided because of interest in range riding from some members of the public and at least one commissioner. In providing this potential additional provision, WDFW does not intend to presume that range riding would be included in every conflict mitigation plan, regardless of whether the additional language is adopted by the commission. Range riding is the most expensive measure analyzed in the small business economic impact statement (SBEIS), ranging from an estimated \$19,000 to \$55,000 per year. This constitutes a significant fraction of average industry revenues for businesses that bear these costs, likely an untenable cost for the smallest businesses. A broadly applicable range riding provision has the potential of increasing costs on small business (potentially untenable costs) and agency staff's preferred approach (addressing range riding only where appropriate via a conflict mitigation plan) is identified in the SBEIS as a cost mitigation option.

WDFW solicits comments on the proposed rule changes attached to this CR-102 notice, as well as the potential addition of a "range riding" specific provision to the proposed rule text. WDFW invites comments on whether the addition of the "range riding" provision drafted above provides useful clarity, or is otherwise proper or improper, and on whether other formulations would be preferable.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.36.030, 77.36.100, 77.36.110, and 77.36.130.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.36.030, 77.36.100, 77.36.110, and 77.36.130.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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 proposal does not require a cost-benefit analysis under RCW 34.05.328 (5) [(a)] (i).

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

SBEIS

Need for the rule: Following decades of extirpation, gray wolves began naturally recolonizing the state of Washington from populations in surrounding states and provinces, with the first pack with pups documented in July 2008. Gray wolves were federally listed under the Endangered Species Act (ESA) throughout their range beginning in 1978 but were delisted in the eastern third of Washington in 2011. In 2021, the United States Fish and Wildlife Service delisted gray wolves from federal protection across all of Washington. With the federal delisting, WDFW is solely responsible for the management and recovery of gray wolves throughout Washington state outside of tribal lands and National Parks. The gray wolf was listed as a state endangered species in 1980 and retains that status.

Conflict between wolves and livestock occurs everywhere the two coexist but generally is not frequent and is not uniform across the landscape. When conflict between wolves and livestock does occur and becomes chronic, it can result in significant costs. In executing its management responsibility for the gray wolf population, WDFW focuses on the proactive use of nonlethal deterrents to minimize wolf-livestock conflict. Starting in 2018, WDFW and the Wolf Advisory Group (WAG)—a citizen stakeholder group with participants ranging from livestock producers, wolf conservation groups, land managers, and hunting advocates among others—began discussing areas where conflict between wolves and livestock appeared to be focused and recurring annually. In 2020, following continued discussion between WDFW, the WAG, the Washington state fish and wildlife commission, and petitions by environmental organizations, Governor Jay Inslee directed WDFW to develop regulations regarding wolf management with the goal of instituting practices that will avoid the repeated loss of wolves and livestock.

The objectives of WDFW's proposed rule are to:

1. Establish a procedure for identifying WDFW's expectations for use of nonlethal tools to mitigate wolf-livestock conflict in areas of chronic conflict, while recognizing the use of nonlethal tools is encouraged statewide; and
2. Establish criteria for the use of WDFW's lethal removal authority in areas of chronic wolf-livestock conflict.

Potentially affected small business: The rule has the potential to affect the behavior of businesses that have, or may in the future, experience wolf depredation. Thus, the businesses potentially affected by this rule are producers of livestock. There are currently 1,095 in-

dividual operations in the State of Washington within the following sectors: Beef cattle ranching and farming, cattle feedlots, dairy cattle and milk production, sheep farming, and goat farming (Exhibit 2-1). Available data suggest that 98 percent of them employ fewer than 50 individuals and are thus considered small (Exhibit 2-1). This finding is corroborated by information provided by industry representatives interviewed for this analysis, as well as employment data for a subset of these businesses available from employment security department.

"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 payroll data are not available, the analysis calculates minor cost thresholds based on revenues of business entities in the affected industries. At a statewide level, the minor cost thresholds for the potentially affected business types range from \$222 (goat farming) to \$1,356 (dairy farms) (in 2020 dollars). The complete list of minor cost thresholds for all relevant business types are identified in Exhibit 2-1. Exhibit 2-2 describes the businesses and minor cost thresholds at a finer resolution for the businesses more likely to be affected by the rule.

TYPE OF BUSINESS (NAICS CODE) ₁	# OF BUSINESSES IN WASHINGTON	PERCENTAGE OF BUSINESSES CONSIDERED SMALL ²	AVERAGE ANNUAL REVENUES (2020\$)	MINOR COST THRESHOLD = 0.3% AVERAGE ANNUAL REVENUES (2020\$)
Cattle ranching (112111)	276	99%	\$140,000	\$430
Cattle feedlots (112112)	111	98%	\$300,000	\$890
Dairy cattle and milk (112120)	509	97%	\$450,000	\$1,400
Sheep farming (112410)	31	100%	\$110,000	\$340
Goat farming (112420)	18	100%	\$74,000	\$220
Other/Multiple	150	99%	\$430,000	\$1,300
TOTAL³	1,095	98%	\$340,000	\$1,020

Notes:

1. Type of business as identified by primary North American Industry Classification System (NAICS) code. Businesses identified as "Other/Multiple" includes those for which the primary NAICS code was something other than a relevant livestock production code, but that identified a relevant NAICS code as a secondary business type.
2. Percent of businesses with <50 employees.
3. Totals may not sum due to rounding.

Source: D&B Hoovers (n.d.). List of livestock production businesses in Washington state. Retrieved January 13, 2022, from <https://libguides.library.ohio.edu/business/databases/d-b-hoovers>.

The businesses most likely to be potentially affected by the rule are those that are in wolf pack territories, where depredation events have the greatest potential to occur. Exhibit 1-2 identifies the counties that (a) include the area that will initially be designated as a chronic conflict area (dark blue), (b) are outside of the chronic conflict area but contain a known wolf pack territory and have experienced depredation events (teal), (c) contain a known wolf pack territory and have not experienced depredation (green), and (d) do not contain a known wolf pack territory (yellow). Of the businesses identified in Exhibit 2-1, many are unlikely to be affected by or incur costs triggered by the rule because there are no wolves present in their areas of operation. To the extent that the territories of the wolf packs expand into these areas at some point in the future, they may also bear the types of costs described in this analysis. However, the likelihood and timing of such an event is uncertain.

This analysis focuses on the livestock producers in the counties overlapping the current known wolf pack territories in Washington state. This analysis finds that producers operating within known wolf pack territories are the most likely to incur costs as a result of the rule. Exhibit 2-2 characterizes these businesses based on their geographic locations in three categories:

- Within counties that overlap the current chronic conflict area;
- Within a county that overlaps with a known wolf pack territory and has experienced depredation, but not in a chronic conflict area; and
- Within a county that overlaps a known wolf pack territory but does not have documented wolf depredation.

As wolf presence and livestock depredation risk are not uniformly distributed across the landscape in the relevant counties, not all the producers identified in Exhibit 2-2 necessarily operate within a known wolf pack territory. The businesses not overlapping with a known wolf pack territory are less likely to experience costs as a result of the rule.

What are their minor cost thresholds?

EXHIBIT 2-2. NUMBERS OF BUSINESSES, ANNUAL REVENUES, AND MINOR COST THRESHOLD FOR POTENTIALLY AFFECTED BUSINESSES

TYPE OF BUSINESS ₁	# OF BUSINESSES IN GROUP	PERCENTAGE OF BUSINESSES CONSIDERED SMALL ²	AVERAGE ANNUAL REVENUES (2020\$)	MINOR COST THRESHOLD = 0.3% AVERAGE ANNUAL REVENUES (2020\$)
Counties Containing Chronic Conflict Area (Stevens and Ferry Counties)³				
Cattle ranching	20	100%	\$91,000	\$270
Cattle feedlots	11	100%	\$103,000	\$310
Dairy cattle and milk	8	100%	\$180,000	\$530
Sheep farming	0	-	-	-
Goat farming	0	-	-	-
Other (multiple)	5	100%	\$130,000	\$380
Counties Containing Known Wolf Pack Territories, Depredation Occurring				
Cattle ranching	61	98%	\$140,000	\$410
Cattle feedlots	14	100%	\$270,000	\$800
Dairy cattle and milk	2	100%	\$130,000	\$390
Sheep farming	2	100%	\$95,000	\$280
Goat farming	1	100%	\$62,000	\$190
Other (multiple)	35	100%	\$230,000	\$700
Counties Containing Known Wolf Pack Territories, Depredation Not Yet Occurring				
Cattle ranching	27	100%	\$110,000	\$340
Cattle feedlots	8	100%	\$82,000	\$250
Dairy cattle and milk	202	98%	\$330,000	\$990
Sheep farming	3	100%	\$58,000	\$170
Goat farming	3	100%	\$69,000	\$210
Other (multiple)	2	100%	\$140,000	\$420

TYPE OF BUSINESS ₁	# OF BUSINESSES IN GROUP	PERCENTAGE OF BUSINESSES CONSIDERED SMALL ²	AVERAGE ANNUAL REVENUES (2020\$)	MINOR COST THRESHOLD = 0.3% AVERAGE ANNUAL REVENUES (2020\$)
<p>Notes:</p> <ol style="list-style-type: none"> 1. Type of business as identified by primary NAICS code. Businesses identified as "Other/Multiple" includes those for which the primary NAICS code was something other than a relevant livestock production code, but that identified a relevant NAICS code as a secondary business type. 2. Percent of businesses with <50 employees. 3. The number of businesses identified include all businesses within Stevens and Ferry counties. Data are not available to isolate the specific businesses that are within the territory of the Togo wolf pack that would be designated as a Chronic Conflict Area under the proposed rule. <p>Source: D&B Hoovers (n.d.). List of livestock production businesses in Washington state. Retrieved January 13, 2022, from https://libguides.library.ohio.edu/business/databases/d-b-hoovers.</p>				

The livestock production industry operating in the counties currently being affected by wolf depredation is dominated by cattle ranches and cattle feedlots. Although there are very few dairy operations in these counties, dairy is the most predominant business type in the other counties within known wolf pack territories (i.e., those not experiencing depredation). The average annual revenues across all relevant industries and counties presented in Exhibit 2-2 range from \$58,000 to \$330,000 per year. The highest average revenues are associated with dairy operations; sheep and goat farming are lower revenue businesses on average. Cattle ranching operations, which most frequently experience wolf depredation, have average annual revenues ranging from approximately \$91,000 to \$140,000. The annual revenues for individual cattle ranching operations ranges from \$30,000 to \$1.1 million.

Potential for businesses to incur costs as a result of the rule:

The likelihood that the rule would trigger livestock producers to implement nonlethal deterrents, above and beyond what they would implement under the baseline (i.e., status quo absent implementation of the rule), is uncertain for the reasons previously described:

1. The livestock producers have a vested interest in protecting their livestock from wolves absent any WDFW rule or regulation and may therefore implement these types of deterrents regardless of the rule making.

2. WDFW works with the industry to recommend, and offer cost-sharing support for, implementation of nonlethal deterrents even absent the rule making.

3. It is currently WDFW practice to evaluate whether a producer has already implemented at least two types of nonlethal deterrents before lethal removal will be considered. Even absent the proposed rule, WDFW would continue to work with industry to ensure appropriate use of nonlethal deterrents before considering lethal removal of wolves.

Given this, it is likely that most businesses at relatively high risk of wolf-livestock conflicts would implement nonlethal deterrents absent the rule. For example, most industry representatives interviewed in areas where wolf depredation has occurred identified that they were already implementing some nonlethal deterrent measures, with those who have experienced depredation indicating implementation of all practical and applicable deterrents. For businesses at relatively low risk of wolf-livestock conflicts, it is most likely they would not implement nonlethal deterrents regardless of this rule making.

That the rule is unlikely to affect the behaviors of most businesses is not in conflict with the purpose of the rule. The objective of the proposed rule is not to direct industry to change the types of nonlethal deterrents that businesses implement and when, but rather to

codify WDFW's practices and establish a process through which WDFW will provide area-specific advice to livestock producers at high risk of depredations in chronic conflict areas and make decisions regarding lethal removal of wolves in these areas moving forward. The benefit of having a defined, standard decision-making process written into regulation is that it requires WDFW to be systematic in developing a roadmap for minimizing wolf-livestock conflicts in chronic conflict areas and reduces any uncertainty for industry regarding WDFW's approach to lethal removal decisions.

This analysis does find, however, that in some cases, the rule may provide actionable information to industry regarding WDFW's process that would trigger changes in behavior regarding use of nonlethal deterrents. Under these circumstances, the associated costs could be considered a result of proposed rule. Specifically, WDFW's development of conflict mitigation plans, and the clarification of the process through which lethal removal of wolves will be considered, may encourage some livestock producers to be more proactive in implementing non-lethal deterrents.

For example, businesses may reference the conflict mitigation plans that WDFW develops (regardless of whether they are in a chronic conflict area) and implement any potentially relevant non-lethal deterrents in order to ensure the option of lethal removal of wolves in the event of future depredation. This scenario is most likely for businesses that anticipate they are at some risk of experiencing wolf-livestock conflicts. Accordingly, businesses closest to recent conflicts or within current known wolf pack territories, or businesses whose livestock management practices otherwise make them more vulnerable to conflicts, may be most likely to be more proactive in implementing nonlethal deterrents as a result of the rule.

Potential cost per business: As previously noted, most businesses are unlikely to experience additional costs as a result of the rule. In the case that the rule motivates an increase in the use of nonlethal deterrents, however, this section provides information on the potential range in the associated costs. As described in Exhibit 2-3, there is a wide range in the costs of individual nonlethal deterrents and the relevant nonlethal deterrents vary by business. Following are the key factors influencing the potential costs to livestock operations that elect to implement nonlethal deterrents due to the WDFW rule:

Specific nonlethal deterrents relevant to the livestock operation: The types of nonlethal deterrents that are likely to be most effective vary geographically and by type of livestock operation. WDFW expects that the conflict mitigation plans will reflect site-specific factors.

Size and nature of the livestock operation: The costs of certain deterrents are a function of the size of the operation or the geographic extent of the rangeland area (e.g., range riding and fencing).

Extent of baseline use of nonlethal deterrents absent the rule: As previously noted, it may be that the businesses are already implementing some types of deterrents regardless of the rule.

Fraction of total costs that would be borne by the business: It is important to note that many of the businesses that are affected by wolf depredation, particularly those that are implementing extensive nonlethal deterrence techniques, rely to some extent on available financial support. This support ranges from sharing of costs of deterrents with WDFW through the Damage Prevention Cooperative Agreement for Livestock (DPCA_L) program and provision of tools such as fox

lights and fladry by WDFW at no cost to producers, and the use of state-funded range riders through WDFW, CPoW, and NEWWCC. These resources are limited, subject to availability, and not guaranteed to be available in the long term. To the extent that financial support becomes more limited, a greater portion of current and future costs of nonlethal deterrents may be borne by the individual producers. Additionally, implementation of nonlethal deterrents may increase as a result of the rule, or as a result of wolf populations expanding to new areas of the state. This may result in available resources being dispersed more widely across a greater number of producers, reducing the existing levels of support individual producers are currently receiving. Industry representatives identified that availability of state-funded range riders is already highly limited, as are state-provided tools such as fox lights and fladry (with most of these resources currently going to producers in the northeastern part of the state). Increased demand for these resources may also increase the proportion of deterrent costs that are paid out-of-pocket by producers.

Despite these uncertainties, based on the information provided in Exhibit 2-3, earnest attempts to implement nonlethal deterrents are likely to cost on the order of thousands to tens of thousands of dollars per year per business. Furthermore, WDFW indicates that human presence (including range riding) will continue to be a key focus of wolf-livestock conflict management under the rule and this measure is the most expensive, ranging from an estimated \$19,000 to \$55,000 per year. This constitutes a significant fraction of average industry revenues for businesses that bear these costs and is likely an untenable cost for the smallest businesses.

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

RCW 19.85.030 requires that, when a rule is expected to disproportionately impact small businesses, the agency consider several methods for reducing the impact of the rule on small businesses. These methods may include decisions that were made in determining the provisions of the rule itself, or opportunities to reduce the costs of implementing the rule as written.

WDFW considered a number of regulatory options in developing the proposed rule, including an alternative that would include a prescriptive and exhaustive set of nonlethal deterrent use requirements that would be broadly required. In considering this alternative, WDFW determined that broad requirements for nonlethal deterrent techniques that may or may not be feasible or effective for an individual business or specific area would result in excessive costs to businesses. The proposed rule instead stipulates that identification of nonlethal deterrents within a conflict mitigation plan will be established with consideration to the particular conditions on the ground, limiting rule costs to only those nonlethal deterrents that are appropriate for the specific situation and affected businesses.

WDFW also considered a rule provision that would identify that all livestock producers who experienced wolf-livestock conflict on public land would need to implement range riding for WDFW to consider lethal removal of a wolf. WDFW has not included this measure in the proposed rule, however, instead proposing to evaluate the expectation for range riding on a case-by-case basis in developing conflict mitigation plans. This more tailored approach may reduce the cost for businesses resulting from rule implementation.

The primary pathway through which WDFW intends to mitigate for costs resulting from the proposed rule is through continuation of the

programs in place to provide financial and other support to livestock producers experiencing depredation. These programs include:

- WDFW's DCPA_L program, which provides cost-sharing opportunities to affected producers for implementation of proactive depredation mitigation measures.
- Provision of WDFW-contracted range riders to implement deterrence activities at no cost to livestock producers.

In considering potential methods for cost mitigation, the agency must evaluate opportunities to simplify, reduce, or eliminate record-keeping and reporting requirements. The rule itself does not directly impose any reporting or recordkeeping requirements on the industry. However, producers that are subject to a conflict mitigation plan will need to provide documentation of nonlethal deterrent use to demonstrate to WDFW they are implementing the terms of the plan for a lethal removal to be considered by WDFW. WDFW anticipates that the required documentation will be similar to that which is currently required under DPCA_L contracts or to submit for compensation of losses. In developing those requirements, WDFW considered the administrative burden placed on producers and the minimum amount and type of information that was necessary to adequately describe implementation of non-lethal deterrents.

The regulating agency must consider delaying compliance timetables as a potential cost mitigation option. The wolf-livestock conflict deterrence rule-making proposal will be provided to the WDFW commission for action on May 13, 2022. If adopted, the rule or rules are tentatively scheduled to be implemented in January 2023 to allow the industry sufficient time to plan for any new costs that may be incurred as a result of the rule.

In addition, WDFW considered a range of suggestions from industry representatives as to how the costs of the rule could be reduced, including the following:

1. Have 100 percent of the costs for nonlethal deterrents be paid for by WDFW.
2. Increase lethal removals or implement relocations of wolves to reduce the populations (reducing the need for nonlethal deterrents).

WDFW considered these and other cost reduction options presented by the industry. However, WDFW has not included these cost reduction measures within the rule for several reasons, including that they didn't meet the intended goals of the rule (e.g., increasing lethal removals), or were outside of the bounds of the rule.

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

- **Reducing the frequency of inspections:** WDFW does not carry out or have the authority to carry out inspections of livestock operations.
- **Reducing or modifying fine schedules for noncompliance:** This rule does not prescribe specific compliance requirements for industry; thus, there are not fines associated with noncompliance.

Did the agency involve small businesses in the rule development process? WDFW and the affected livestock industry have worked closely together to address the challenges of wolf-livestock conflict since wolves began populating the state. This section describes the historical stakeholder involvement in this process, their involvement specifically in this rule-making process, and how small businesses were involved in the development of the SBEIS.

Will business[es] have to hire or fire employees because of the requirements in the rule? Through establishment of chronic conflict areas and conflict mitigation plans, the rule has the potential to increase the number of businesses that will utilize range riding as a nonlethal deterrent or increase the frequency of range riding. Industry representatives indicated that it is difficult to implement frequent or extensive range riding by business owners or existing employees because of the time taken away from other required activities. Interviewees further identified that the rule was likely to result in the need for additional range riders either paid for by the businesses themselves, or provided by CPOW, NEWWCC, or WDFW. As a result, the rule may increase the number of range riding jobs in the industry.

Conversely, for certain businesses, it is possible that the costs of nonlethal deterrents interpreted as required by the rule cannot be absorbed by current revenue streams. In some instances, this could result in business closures and job loss. However, whether this would occur, and the number of businesses or jobs affected, is uncertain.

A copy of the statement may be obtained by contacting Annie Szvetecz, Agency Rules Coordinator, P.O. Box 43200, Olympia, WA 98504-3200, phone 360-480-6536, email Rule.Coordinator@dfw.wa.gov, website <https://wdfw.wa.gov/about/regulations/development/wolf-livestock-conflict-deterrence>.

February 16, 2022
Annie Szvetecz
Rules Coordinator

OTS-3556.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-080 Killing wolves attacking domestic animals. The commission is authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing damage on private property. The department may authorize, pursuant to RCW 77.12.240 the killing of wildlife destroying or injuring property. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 220 WAC.

(1) An owner of domestic animals, the owner's immediate family member, the agent of an owner, or the owner's documented employee may kill one gray wolf (*Canis lupus*) without a permit issued by the director, regardless of its state classification, if the wolf is attacking their domestic animals.

(a) This section applies to the area of the state where the gray wolf is not listed as endangered or threatened under the federal Endangered Species Act.

(b) Any wolf killed under this authority must be reported to the department within (~~twenty-four~~) 24 hours.

(c) The wolf carcass must be surrendered to the department.

(d) The owner of the domestic animal must grant or assist the department in gaining access to the property where the wolf was killed for the purposes of data collection or incident investigation.

(2) If the department finds that a private citizen killed a gray wolf that was not attacking a domestic animal, or that the killing was not consistent with this rule, then that person may be prosecuted for unlawful taking of endangered wildlife under RCW 77.15.120.

(3) In addition to the provisions of subsection (1) of this section, the director (or WDFW staff designee) may authorize agency lethal removal of wolves or additional removals by permit under the authority of RCW 77.12.240 if the director (or WDFW staff designee) determines an owner has proactively implemented appropriate nonlethal conflict deterrence measures.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-440-080, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.240, chapter 77.36 RCW, and 2013 c 329. WSR 13-22-056 (Order 13-282), § 232-36-052, filed 11/4/13, effective 12/5/13.]

NEW SECTION

WAC 220-440-260 Wolf-livestock conflict deterrence in chronic conflict areas. (1) Definitions:

(a) "Affected livestock producers" means the livestock producers in a conflict mitigation plan drafted by Washington department of fish and wildlife (WDFW) pursuant to subsection (2) of this section. This includes, but is not limited to, livestock producers who experienced wolf depredation in the chronic conflict area.

(b) "Livestock producer" means any person who owns livestock for home use or for profit, especially on a ranch or farm.

(c) "Wolf depredation" means an incident or event that results in the injury or death of livestock on federal, state, tribal, or other public lands, or private lands by one or more wolves.

(d) "Wolf pack" means a group of two or more wolves traveling together in winter.

(e) "Wolf pack territory" means an area occupied by a pack of wolves, including den and rendezvous sites if the pack is reproductive.

(2) Conflict mitigation plan.

The director (or WDFW staff designee) may designate a geographic area (e.g., all or a portion of a wolf pack territory) as a chronic conflict area when wolf depredations of livestock have occurred and lethal removal of wolves was authorized in two of the last three years.

For each designated chronic conflict area, WDFW staff will author a conflict mitigation plan. To the extent feasible, WDFW will develop the conflict mitigation plan in consultation with willing, affected livestock producers, as well as federal, state, and tribal agencies that manage lands and/or wildlife in the designated chronic conflict area. The plan will specify nonlethal deterrence measures that are appropriate for the chronic conflict area according to the professional judgment of WDFW staff, considering, but not limited to:

(a) Species and type of livestock;

(b) Characteristics of the livestock operation (e.g., size of pastures, type of fencing, open range grazing, presence of calving pens);

(c) Herd composition, calving/lambing periods, and/or seasonality of livestock production for each affected livestock producer in a chronic conflict area;

(d) The season of use when livestock are permitted to be on a leased grazing area (if applicable);

(e) Location(s) where livestock will be grazed and measures to avoid livestock trespass;

(f) Measures to avoid unnatural attractants for wolves; and

(g) Landscape characteristics.

Once a mitigation plan is in place, the plan may be revised or terminated by WDFW if on-the-ground conditions or state of knowledge changes.

(3) Criteria for lethal removal of wolves.

(a) The director (or WDFW staff designee) may authorize lethal removal of wolves in a chronic conflict area as a tool to address repeated depredations by wolves on livestock on a case-by-case basis if, in the judgment of the director (or WDFW staff designee):

(i) Depredations are likely to continue;

(A) Intentional feeding/baiting of wolves was not a known factor in the repeated depredations;

(B) Empirical and predictive data suggests that lethal removal of wolves is not expected to harm the wolf population's ability to reach recovery objectives statewide or within individual wolf recovery regions; and

(C) One of the following circumstances are present:

(I) The material conditions and expectations set forth in any applicable conflict mitigation plans have been substantially complied with; or

(II) Wolves have attacked, injured, or killed livestock of more than one livestock producer where one of the livestock producers with depredated livestock implemented nonlethal deterrence measures as deemed appropriate by WDFW staff, even if a neighboring livestock producer did not fully implement nonlethal deterrence measures set forth in an applicable conflict mitigation plan.

(b) The lethal removal authorization will have an expiration date specified at the time of issue. Once issued, the authorization may be revised or terminated by WDFW if on-the-ground conditions or state of knowledge changes.

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WSR 22-05-094
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed February 16, 2022, 9:07 a.m.]

Supplemental Notice to WSR 22-01-204.

Preproposal statement of inquiry was filed as WSR 21-07-035.

Title of Rule and Other Identifying Information: Petitions for judicial review—Service on agency (WAC 192-04-210), How do I reopen my claim? (WAC 192-110-050), Charging non-Washington combined-wage claims under RCW 50.29.021 (2)(j) (WAC 192-320-072).

Hearing Location(s): On March 24, 2022, at 9 a.m., Zoom, Meeting ID 871 6119 4144, Passcode 299796, Call-in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/87161194144?pwd=bExzNkRndlRtWUJQZ1JiUWtFOU5wdz09>.

Date of Intended Adoption: March 30, 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 March 24, 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 March 17, 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. 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.

The supplemental filing provides a second public hearing to allow for additional comments from the public.

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.

February 16, 2022

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).

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WSR 22-05-095

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 16, 2022, 9:09 a.m.]

Supplemental Notice to WSR 22-01-192.

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 waiving the week requirement when the first week of unemployment benefits are federally funded (WAC 192-110-006), and What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim? (WAC 192-240-070).

Hearing Location(s): On March 24, 2022, at 9 a.m., Zoom, Meeting ID 871 6119 4144, Passcode 299796, Call-in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/87161194144?pwd=bExzNkRndlRtWUJQZ1JiUWtFOU5wdz09>.

Date of Intended Adoption: March 30, 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 March 24, 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 March 17, 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 waiting week requirements and emergency and extended benefits. 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, 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.

The supplemental filing provides a second public hearing to allow for additional comments from the public.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.20.010, 50.20.190.

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: ESD, governmental.

Name of Agency Personnel Responsible for 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.

February 16, 2022

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.

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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 22-05-100
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed February 16, 2022, 9:54 a.m.]

Supplemental Notice to WSR 22-01-191.

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 a claim is impacted by imposter fraud?

Added since the original filing: WAC 192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110, 192-270-035 Time frames, and 192-100-901 Isolation and quarantine.

Hearing Location(s): On March 24, 2022, at 9 a.m., Zoom, Meeting ID 871 6119 4144, Passcode 299796, Call-in 253-215-8782. Join Zoom meeting <https://us02web.zoom.us/j/87161194144?pwd=bExzNkRndlRtWUJQZl1JiUWtFOU5wdz09>.

Date of Intended Adoption: March 30, 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 March 24, 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 March 17, 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 certain emergency rules adopted during the COVID-19 response should be made permanent.

The supplemental filing adds WAC 192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110, 192-270-035 Time frames, and 192-100-901 Isolation and quarantine, which were not included in the original CR-102.

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 ESD. 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 purpose 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 claimant's 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(6) 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. Under RCW 50.20.100, in determining whether work is suitable for an individual, the commissioner shall consider factors the commissioner may deem pertinent.

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); RCW 50.20.050 (1)(b)(ii), (2)(b)(ii) (leaving work due to an illness or disability); RCW 50.22.155 (2)(d) (training benefits eligibility requirement to make satisfactory progress in training as defined by the commissioner); RCW 50.20.100 (suitable work factors); RCW 50.20.110 (suitable work exceptions).

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 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.

February 16, 2022

Dan Zeitlin

Employment System Policy Director

OTS-2115.1

NEW SECTION

WAC 192-100-901 Isolation and quarantine. (1) "Isolation" means the same as the definition in WAC 246-100-011.

(2) "Quarantine" means the same as the definition in WAC 246-100-011.

[]

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 includ-

ing, 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-3592.1

AMENDATORY SECTION (Amending WSR 21-16-034, filed 7/26/21, effective 1/2/22)

WAC 192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110. (1) **Physical fitness.** In determining whether work is suitable as defined by RCW 50.20.100 and 50.20.110, the department will consider whether you have a disability that prevents you from performing the essential functions of the job without a substantial risk to your health or safety.

(a) For purposes of this section, the term "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) The department may determine in individual circumstances that less than full-time work is suitable if:

(i) The disability prevents you from working the number of hours that are customary to the occupation;

(ii) You are actively seeking work for the occupation and hours you have the ability to perform; and

(iii) The restriction on the number of hours you can work, the essential functions you can perform, and the occupations you are seeking does not substantially limit your employment prospects within your general area.

(c) To be considered available for suitable work, you must be available for employment in an occupation in keeping with your prior work experience, shifts of employment, education, or training. If such employment is not available in your general area, you must be willing to accept any employment which you have the physical or mental ability to perform.

(d) Disabilities resulting from pregnancy will be treated the same as other disabilities, except that the department will also consider the risk to your pregnancy when deciding whether work is suitable.

(e) The department will require verification from a physician of your disability, including:

(i) The restrictions on the tasks or work-related functions you can perform;

(ii) The restrictions on the number of hours you can work, if any;

(iii) The expected duration of the disability and resulting work restrictions; and

(iv) The types of tasks or work-related functions you are able to perform with this disability, if known by the physician.

(f) For purposes of this section, "disability" 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.

(2) **Definitions.** For the purposes of this chapter:

(a) "General area" means an individual's labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation.

(b) "Physician" means a person licensed to practice one or more of the following professions: Medicine and surgery (including, but not limited to, psychiatry); osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010 and 50.20.100. WSR 21-16-034, § 192-170-050, filed 7/26/21, effective 1/2/22. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 02-08-072, § 192-170-050, filed 4/2/02, effective 5/3/02.]

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; ((~~or~~))
- (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 register 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.

~~((c))~~ (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-3271.1

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-270-035 Time frames. (1) Information about training benefits will be included in the informational notice sent to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of subsections (2) and (3) of this section, the informational notice is considered your notification of the eligibility requirements for the training benefits program.

(2) Submitting a training plan.

Except for dislocated workers eligible under RCW 50.22.155

(2) (a) (i), you have ninety calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be ninety-five calendar days from the date your application for benefits is filed, which represents ninety days plus five days for the informational notice to reach you if sent by regular mail.

(3) Enrollment in training.

Except for dislocated workers eligible under RCW 50.22.155

(2) (a) (i), you must be enrolled in training within one hundred twenty calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be one hundred twenty-five calendar days from the date your application for benefits is filed, which represents one hundred twenty days plus five days for the informational notice to reach you if sent by regular mail.

(4) If you are a dislocated worker eligible under RCW 50.22.155

(2) (a) (i), you must submit a training plan and enroll in training prior to the end of your benefit year.

(5) Except for dislocated workers eligible under RCW 50.22.155

(2) (a) (i), these time frames may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity. "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; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the time frames established under this section.

(6) If you return to work, and subsequently become unemployed, the time frames described in subsections (2) and (3) begin with the date you file your additional claim for benefits.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-270-035, filed 10/7/16, effective 11/14/16; WSR 14-06-019, § 192-270-035, filed 2/24/14, effective 3/27/14. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.22.155(12). WSR 12-09-025, § 192-270-035, filed 4/6/12, effective 7/1/12. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 09-20-095, § 192-270-035, filed 10/7/09, effective 11/7/09. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). WSR 01-11-085, § 192-270-035, filed 5/16/01, effective 6/16/01.]

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 registered 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.]