

**WSR 22-10-009**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 22, 2022, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-106.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-422-0020 What if you are afraid that cooperating with the division of child support (DCS) may be dangerous for you or the child in your care?

Hearing Location(s): On June 7, 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 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 June 8, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by June 7, 2022, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email [tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov) [[tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov)], by May 24, 2022, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will clarify terms related to good cause for noncooperation with the division of child support under the temporary assistance for needy families program.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504-5770, 360-522-2214.

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: These amendments do not impact small businesses. They only impact DSHS clients.

April 20, 2022  
Katherine I. Vasquez

## SHS-4916.1

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

**WAC 388-422-0020** What if you are afraid that cooperating with the division of child support (DCS) may ~~((be dangerous))~~ cause physical or emotional harm for you or the child in your care? (1) You can be excused from cooperating with DCS when you have a good reason. A good reason not to cooperate is also called good cause. You have a good reason when you can prove that:

- (a) Cooperating with DCS would result in serious:
  - (i) physical ~~((or emotional))~~ harm to you or the child in your care; or
  - (ii) emotional harm to you or the child in your care.
- (b) Establishing paternity or getting support would be harmful to the child who:
  - (i) Was conceived as a result of incest or rape; or
  - (ii) Is the subject of legal adoption proceedings pending before a superior court; or
  - (iii) Is the subject of ongoing discussions between you and a public or licensed child placement agency to decide whether you will keep the child or put the child up for adoption. The discussions cannot have gone on for more than three months.

(2) Once you claim good cause for TANF/SFA, you have ~~((twenty))~~ 20 days to give us the information that proves you have good cause not to cooperate with DCS. This information can include official records, sworn statements, or other information that supports your good cause claim. If you need to, you may ask for:

- (a) More time to give proof; or
- (b) Help in getting proof.

(3) While we review your good cause claim, DCS does not take any action to establish or enforce support on your case.

(4) You have the right to:

- (a) Be told of your right to claim good cause for not cooperating with DCS;
- (b) Get benefits while we are deciding your good cause claim, as long as you have given the proof needed to make a decision;
- (c) Get a decision within ~~((thirty))~~ 30 days from the date you made your good cause claim, as long as you have given the proof needed to make a decision within ~~((twenty))~~ 20 days; and
- (d) Get information about how to request a fair hearing if we deny your good cause claim.

(5) If we approve your good cause claim, we periodically review the claim depending on your circumstances.

(6) To see what DCS does when good cause is approved see WAC 388-14A-2060.

[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, § 388-422-0020, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050,

74.04.055, 74.04.057, 74.08.090. WSR 02-19-041, § 388-422-0020, filed 9/11/02, effective 10/12/02; WSR 98-16-044, § 388-422-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0570 and 388-505-0560.]

## WSR 22-10-042

## PROPOSED RULES

## DEPARTMENT OF REVENUE

[Filed April 27, 2022, 2:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-029.

Title of Rule and Other Identifying Information: WAC 458-40-660  
Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): On June 7, 2022, at 10:00 a.m. This meeting will be conducted over the internet and telephone. Contact Atif Aziz, rules coordinator, at Atifa@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: June 16, 2022.

Submit Written Comments to: Brenton Madison, P.O. Box 47453, Olympia, WA 98504-7453, email BrentonM@dor.wa.gov, fax 360-534-1583, by June 10, 2022.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes the stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply July 1 through December 31, 2022.

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for July 1 through December 31, 2022.

Statutory Authority for Adoption: RCW 82.01.060(2), 84.33.096, 82.32.300.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Brenton Madison, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606.

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 does not impose more-than-minor costs on businesses, as it does not propose any new requirements.

April 27, 2022  
Atif Aziz  
Rules Coordinator

OTS-3757.1

AMENDATORY SECTION (Amending WSR 22-01-185, filed 12/20/21, effective 1/1/22)

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.** (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2022:

Washington State Department of Revenue

**WESTERN WASHINGTON STUMPAGE VALUE TABLE**

~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2022

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values		
Douglas-fir <sup>(2)</sup>	DF	1	<del>((455))</del> <u>509</u>		
		2	<del>((556))</del> <u>611</u>		
		3	<del>((584))</del> <u>658</u>		
		4	<del>((603))</del> <u>640</u>		
		5	<del>((554))</del> <u>559</u>		
		9	<del>((441))</del> <u>495</u>		
		Western Hemlock and Other Conifer <sup>(3)</sup>	WH	1	<del>((314))</del> <u>342</u>
				2	<del>((386))</del> <u>448</u>
				3	<del>((367))</del> <u>404</u>
4	<del>((404))</del> <u>418</u>				
5	<del>((373))</del> <u>399</u>				
Western Redcedar <sup>(4)</sup>	RC	1-5	<del>((1515))</del> <u>1472</u>		
		9	<del>((1501))</del> <u>1458</u>		
Ponderosa Pine <sup>(5)</sup>	PP	1-5	<del>((171))</del> <u>185</u>		
		9	<del>((157))</del> <u>171</u>		
Red Alder	RA	1-5	<del>((464))</del> <u>521</u>		
		9	<del>((450))</del> <u>507</u>		

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Black Cottonwood	BC	1-5	39
		9	25
Other Hardwood	OH	1-5	((198)) 251
		9	((184)) 237
Douglas-fir Poles & Piles	DFL	1-5	((841)) 975
		9	((827)) 961
Western Redcedar Poles	RCL	1-5	((1838)) 1763
		9	((1824)) 1749
Chipwood <sup>(6)</sup>	CHW	1-5	1
		9	1
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-9	322
Posts <sup>(8)</sup>	LPP	1-9	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-9	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-9	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

**Washington State Department of Revenue**

**EASTERN WASHINGTON STUMPAGE VALUE TABLE**

((January)) July 1 through ((June 30)) December 31, 2022

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	6	((379)) \$410
		7	((393)) 424
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	6	((266)) 304
		7	((280)) 318

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Redcedar <sup>(4)</sup>	RC	6	((1338)) <u>1689</u>
		7	((1352)) <u>1703</u>
Ponderosa Pine <sup>(5)</sup>	PP	6	((157)) <u>171</u>
		7	((171)) <u>185</u>
Other Hardwood	OH	6	1
		7	9
Western Redcedar Poles	RCL	6	((1764)) <u>1891</u>
		7	((1778)) <u>1905</u>
Chipwood <sup>(6)</sup>	CHW	6	1
		7	1
Small Logs <sup>(6)</sup>	SML	6	23
		7	25
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	6-7	322
Posts <sup>(8)</sup>	LPP	6-7	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	6-7	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	6-7	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.

(4) Includes Alaska-Cedar.

(5) Includes Western White Pine in SVA 6-7.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.

(9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over two acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from January 1 through June 30, 2022:

**TABLE 9—Harvest Adjustment Table**  
**Stumpage Value Areas 1, 2, 3, 4, 5, and 9**  
 ((January)) July 1 through ((June-30)) December 31,  
 2022

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00



Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table**  
**Stumpage Value Areas 6 and 7**  
 ((January)) July 1 through ((June 30)) December 31,  
 2022

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00
Note:	This adjustment only applies to published MBF sawlog values.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

- (i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.
- (ii) Others not listed; volcanic activity, earthquake.
- (b) Causes that do not qualify for adjustment include:
  - (i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and
  - (ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.
- (c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.
- (d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.
- (5) **Forest-derived biomass**, has a \$0/ton stumpage value.

[Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 22-01-185, § 458-40-660, filed 12/20/21, effective 1/1/22. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 21-13-100, § 458-40-660, filed 6/18/21, effective 7/1/21. Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 21-02-020, § 458-40-660, filed 12/28/20, effective 1/1/21. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 20-14-067, § 458-40-660, filed 6/26/20, effective 7/1/20; WSR 20-02-053, § 458-40-660, filed 12/23/19, effective 1/1/20; WSR 19-14-013, § 458-40-660, filed 6/21/19, effective 7/1/19; WSR 19-02-069, § 458-40-660, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 18-14-023, § 458-40-660, filed 6/26/18, effective 7/1/18; WSR 18-02-058, § 458-40-660, filed 12/29/17, effective 1/1/18; WSR 17-14-020, § 458-40-660, filed 6/23/17, effective 7/1/17; WSR 17-02-003, § 458-40-660, filed 12/22/16, effective 1/1/17. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 16-14-035, § 458-40-660, filed 6/28/16, effective 7/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 16-01-069, § 458-40-660, filed 12/14/15, effective 1/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 15-14-019, § 458-40-660, filed 6/22/15, effective 7/1/15; WSR 15-01-095, § 458-40-660, filed 12/17/14, effective 1/1/15. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 14-14-079, § 458-40-660, filed 6/27/14, effective 7/1/14; WSR 14-01-097, § 458-40-660, filed 12/17/13, effective 1/1/14; WSR 13-14-056, § 458-40-660, filed 6/28/13, effective 7/1/13; WSR 13-02-034, § 458-40-660, filed 12/21/12, effective 1/1/13; WSR 12-14-065, § 458-40-660, filed 6/29/12, effective 7/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091 and 84.33.140. WSR 12-02-040, § 458-40-660, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 11-14-051, § 458-40-660, filed 6/29/11, effective 7/1/11; WSR 11-02-014, § 458-40-660, filed 12/29/10, effective 1/1/11; WSR 10-14-095, § 458-40-660, filed 7/6/10, effective 7/6/10; WSR 10-02-032, § 458-40-660, filed 12/29/09, effective 1/1/10; WSR 09-14-109, § 458-40-660, filed 6/30/09, effective 7/1/09; WSR 09-02-043, § 458-40-660, filed 12/31/08, effective 1/1/09; WSR 08-14-085, § 458-40-660, filed 6/27/08, effective 7/1/08; WSR 08-02-064, § 458-40-660, filed 12/28/07, effective 1/1/08; WSR

07-14-095, § 458-40-660, filed 6/29/07, effective 7/1/07; WSR  
07-02-039, § 458-40-660, filed 12/26/06, effective 1/1/07; WSR  
06-14-064, § 458-40-660, filed 6/30/06, effective 7/1/06; WSR  
06-02-005, § 458-40-660, filed 12/22/05, effective 1/1/06; WSR  
05-14-087, § 458-40-660, filed 6/30/05, effective 7/1/05; WSR  
05-02-040, § 458-40-660, filed 12/30/04, effective 1/1/05; WSR  
04-14-033, § 458-40-660, filed 6/29/04, effective 7/1/04; WSR  
04-01-125, § 458-40-660, filed 12/18/03, effective 1/1/04; WSR  
03-14-072, § 458-40-660, filed 6/26/03, effective 7/1/03. Statutory  
Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and  
84.33.140. WSR 03-02-004, § 458-40-660, filed 12/19/02, effective  
1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091.  
WSR 02-14-019, § 458-40-660, filed 6/21/02, effective 7/1/02. Statuto-  
ry Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. WSR  
02-02-033, § 458-40-660, filed 12/24/01, effective 1/1/02. Statutory  
Authority: RCW 82.32.300, 84.33.096, and 84.33.091. WSR 01-13-105, §  
458-40-660, filed 6/20/01, effective 7/1/01; WSR 01-02-020, §  
458-40-660, filed 12/21/00, effective 1/1/01. Statutory Authority: RCW  
82.32.300, 84.33.096, 84.33.091, 82.32.060, and 84.33.077. WSR  
00-19-067, § 458-40-660, filed 9/19/00, effective 1/1/01. Statutory  
Authority: RCW 82.32.300, 84.33.096 and 84.33.091. WSR 00-14-011, §  
458-40-660, filed 6/27/00, effective 7/1/00; WSR 00-02-019, §  
458-40-660, filed 12/27/99, effective 1/1/00; WSR 99-14-055, §  
458-40-660, filed 6/30/99, effective 7/1/99; WSR 99-02-032, §  
458-40-660, filed 12/30/98, effective 1/1/99; WSR 98-14-083, §  
458-40-660, filed 6/30/98, effective 7/1/98; WSR 98-02-015, §  
458-40-660, filed 12/30/97, effective 1/1/98; WSR 97-14-068, §  
458-40-660, filed 6/30/97, effective 7/1/97. Statutory Authority: RCW  
82.32.330, 84.33.096 and 84.33.091. WSR 97-02-069, § 458-40-660, filed  
12/31/96, effective 1/1/97; WSR 96-14-063, § 458-40-660, filed  
6/28/96, effective 7/1/96; WSR 96-02-057, § 458-40-660, filed  
12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330,  
84.33.096 and 84.33.200. WSR 95-18-027, § 458-40-660, filed 8/25/95,  
effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096.  
WSR 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statu-  
tory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096.  
WSR 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; WSR  
94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; WSR  
93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; WSR  
93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; WSR  
92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; WSR  
92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory  
Authority: RCW 84.33.096 and 82.32.300. WSR 91-14-077, § 458-40-660,  
filed 6/28/91, effective 7/1/91; WSR 91-09-030, § 458-40-660, filed  
4/12/91, effective 5/13/91; WSR 91-02-088, § 458-40-660, filed  
12/31/90, effective 1/31/91; WSR 90-14-033, § 458-40-660, filed  
6/29/90, effective 7/30/90; WSR 90-02-049, § 458-40-660, filed  
12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW  
and RCW 84.33.091. WSR 89-14-051 (Order FT-89-2), § 458-40-660, filed  
6/30/89; WSR 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88;  
WSR 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; WSR  
88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Au-  
thority: Chapter 84.33 RCW. WSR 87-14-042 (Order 87-2), § 458-40-660,  
filed 6/30/87; WSR 87-02-023 (Order 86-4), § 458-40-660, filed  
12/31/86.]

**WSR 22-10-051**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed April 29, 2022, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-130.

Title of Rule and Other Identifying Information: WAC 388-829-0085 How many hours of continuing education must DDA community residential staff complete each year?, 388-829-0086 When must a direct support professional employed during the COVID-19 public health emergency complete training?, and 388-829-0087 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to direct support professionals employed during the pandemic?

Hearing Location(s): On June 7, 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 June 8, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m. on June 7, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov) [[tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov)], by 5:00 p.m. on May 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) amended WAC 388-829-0085 to clarify when continuing education credits must be completed. New WAC 388-829-0086 and 388-829-0087 establish training and continuing education requirements for people employed during the COVID-19 public health emergency.

Reasons Supporting Proposal: These amendments are necessary to clarify, and in some circumstances extend, the due dates for providers who are required to complete training and continuing education requirements under chapter 388-829 WAC.

Statutory Authority for Adoption: RCW 71A.12.030, 74.39A.074.

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: Sarah Blanchette, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1540.

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 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email [Chantelle.Diaz@dshs.wa.gov](mailto: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 19.85.030 because the rules do not impose new costs.

Explanation of exemptions: While providers do pay for their staff to attend trainings, continuing education training reimbursement is built into the provider's rate.

April 28, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4897.9

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0085 How many hours of continuing education must DDA community residential staff complete each year?** (1) ~~((Effective January 1, 2016, service providers))~~ A direct support professional must complete ~~((twelve))~~ 12 hours of continuing education: ~~((CE))~~

(a) Each calendar year, except in the calendar year they complete ~~((the))~~ one-time basic training ~~((requirement-))~~; or

(b) By their birth date each year if the direct support professional is also a:

(i) Registered nurse;

(ii) Licensed practical nurse;

(iii) Nurse technician;

(iv) Advanced registered nurse practitioner; or

(v) Home care aide certified.

~~((2) Service providers who are not credentialed through the department of health (DOH) must complete their CE by the end of the calendar year.~~

~~(3) Service providers must complete DOH required CE (such as home care aide certification) by their birth date each year.)~~

(2) A direct support professional employed during the COVID-19 public health emergency must complete:

(a) Training according to WAC 388-829-0086; and

(b) Continuing education according to WAC 388-829-0087.

[Statutory Authority: RCW 71A.12.030, 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041. WSR 17-14-090, § 388-829-0085, filed 6/30/17, effective 8/1/17.]

## NEW SECTION

**WAC 388-829-0086 When must a direct support professional employed during the COVID-19 public health emergency complete training, including specialty training?** (1) A direct support professional employed during the COVID-19 public health emergency must complete training, including specialty training, as follows:

Worker hired during the time frame of:	Must complete 75-hour new employee training no later than:
8/17/2019 to 9/30/2020	10/31/2022
10/1/2020 to 4/30/2021	1/31/2023
5/1/2021 to 3/31/2022	4/30/2023
4/1/2022 to 9/30/2022	8/31/2023
10/1/2022 to 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	9/30/2023 or no more than 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	As required under WAC 388-829-0015

(2) Nothing in this section prevents a direct support professional hired between 8/17/2019 and 9/30/2022 from completing training in advance of the deadlines in subsection (1) of this section.

[]

NEW SECTION

**WAC 388-829-0087 What continuing education credit is granted to direct support professionals employed during the pandemic and when must continuing education be completed?** (1) The department finds that direct support professionals employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Direct support professionals received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all service providers under WAC 388-829-0005. Instruction included infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, direct support professionals required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training comprised of at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training:

(a) Is not considered to be repeated training as described in WAC 388-829-0100; and

(b) Satisfies the 12 hours of annual continuing education training.

(4) The direct support professional may apply the 12 hours of on-the-job training towards continuing education for either 2020 or 2021. The hours must be applied no later than December 31, 2021.

(5) All direct support professionals employed during the dates in subsection (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required.

(6) The department recognizes that direct support professionals may not have completed training hours in excess of the 12 hours of CE granted in subsection (4) of this section due to the COVID-19 public health emergency. All direct support professionals have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. For an employee required to complete training by their birthday under WAC 388-101D-0085 (1)(b), the employee will have 120 days from the end of the training waivers to complete the required CE if the employee's birthday is fewer than 120 days after the training waivers are lifted.

[ ]

## WSR 22-10-057

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 2, 2022, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-041.

Title of Rule and Other Identifying Information: The department is proposing a change to WAC 388-103-0001 What definitions apply to this chapter to include a definition of reckless as it pertains to abuse, and 388-103-0210 May a nursing assistant petition the department to have their name removed from the vulnerable adult abuse registry?, to include a clarification of when this rule applies.

Hearing Location(s): On June 7, 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 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 June 8, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m. on June 7, 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](mailto:tencza@dshs.wa.gov) [[tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov)], by 5:00 p.m. on May 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to implement changes to chapter 74.34 RCW in response to the passing of E2SHB 1320 in 2021 (chapter 215, Laws of 2021), as well as clarifying the implementation of 42 U.S.C. Sec. 1396r (g)(1)(D) and 1395i-3 (g)(1)(D).

Reasons Supporting Proposal: Reckless was added to the definition of abuse under RCW 74.34.020. Adult protective services (APS) has definitions for willful and intentional already listed in WAC 388-103-0001, and a definition of reckless is needed to ensure consistent interpretation as it relates to abuse. APS has a process for certified nurse aid (CNA) petitions for removal from the registry listed in WAC 388-103-0210. APS wants to clarify that this petition for removal applies only to CNAs with a single incident of neglect in skilled nursing facilities or nursing facilities, as outlined under 42 U.S.C. Sec. 1396r (g)(1)(D) and 42 U.S.C. Sec. 1395i-3 (g)(1)(D).

Statutory Authority for Adoption: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D) and 42 U.S.C. Sec. 1395i-3 (g)(1)(D).

Statute Being Implemented: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D) and 42 U.S.C. Sec. 1395i-3 (g)(1)(D).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Arielle Finney, P.O. Box 45600, Olympia, WA 98504, 360-485-7784.



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. All proposals are to (1) adopt or incorporate by reference without material change, federal statutes or regulations, Washington state statutes; (2) clarify language of a rule without changing its effect; or (3) are interpretive rules (chapter 215, Laws of 2021), 42 U.S.C. Sec. 1396r (g) (1) (D), and 42 U.S.C. Sec. 1395i-3 (g) (1) (D).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: Chapter 215, Laws of 2021, 42 U.S.C. Sec. 1396r (g) (1) (D), 42 U.S.C. Sec. 1395i-3 (g) (1) (D).

April 28, 2022  
Katherine I. Vasquez  
Rules Coordinator

### SHS-4922.3

AMENDATORY SECTION (Amending WSR 21-11-108, filed 5/19/21, effective 7/1/21)

**WAC 388-103-0001 What definitions apply to this chapter?** In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to this chapter:

(1) With respect to "abuse", the following definitions apply:

(a) Intentional. A person's action or inaction is intentional when the person's objective or purpose is to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

(b) Willful. Willful is synonymous to knowing. A person's action or inaction is knowing when the person is aware that his or her action or inaction would inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

(c) Reckless. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that his or her action or inaction is likely to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult, and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

~~((1))~~ (2) "Adult family home" is defined under chapter 70.128 RCW.

~~((2))~~ (3) "Alleged perpetrator" means the person who is alleged to have abandoned, abused, financially exploited, neglected, or misap-

propriated the property of, an alleged victim; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation.

~~((3))~~ (4) "Alleged victim" means:

(a) The person who is alleged to have been abandoned, abused, financially exploited, neglected, or had their property misappropriated by an alleged perpetrator; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation; or

(b) The person who is alleged to be neglecting themselves; and the department has received a report of, is investigating, or has made an initial substantiated finding about the self-neglect.

~~((4))~~ (5) "Assisted living facility" is defined under chapter 18.20 RCW.

~~((5))~~ (6) "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

~~((6))~~ (7) "Facility" means a residence licensed or required to be licensed under:

(a) Chapter 18.20 RCW, assisted living facilities;

(b) Chapter 18.51 RCW, nursing homes;

(c) Chapter 70.128 RCW, adult family homes;

(d) Chapter 72.36 RCW, soldiers' homes;

(e) Chapter 71A.20 RCW, residential habilitation centers;

(f) Chapter 70.97 RCW, enhanced services facilities; or

(g) Any other facility licensed or certified by the department.

~~((7))~~ (8) "Final substantiated finding" means an initial substantiated finding of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect that:

(a) Has been upheld through the administrative hearing process described in WAC 388-103-0090 through 388-103-0160; or

(b) Is not timely appealed to the office of administrative hearings as required under WAC 388-103-0100.

~~((8))~~ (9) "Initial substantiated finding" means a finding by the department that, more likely than not, the alleged abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect occurred.

~~((9))~~ (10) "Legal representative" means a guardian or conservator appointed under either chapter 11.88 RCW or chapter 11.130 RCW; or an agent granted authority under a power of attorney as described under chapter 11.125 RCW.

~~((10))~~ (11) "Nursing assistant" means as it is defined under chapter 18.88A RCW.

~~((11))~~ (12) "Nursing facility" means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the Social Security Act (42 U.S.C. Sec. 1396r).

~~((12))~~ (13) "Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

~~((13))~~ (14) "Person with a duty of care," in the context of abandonment and neglect, includes:

(a) A guardian or conservator appointed under chapter 11.88 RCW or chapter 11.130 RCW;

(b) An agent granted authority under a power of attorney as described under chapter 11.125 RCW; or

(c) A person providing the basic necessities of life to a vulnerable adult where:

(i) The person is employed by or on behalf of the vulnerable adult; or

(ii) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

~~((14))~~ (15) "Skilled nursing facility" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the Social Security Act (42 U.S.C. Sec. 1395i-3).

~~((15))~~ (16) "Vulnerable adult abuse registry" means the registry, established and maintained by the department as required under RCW 74.39A.056, that contains identifying information about people who have final substantiated findings of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect of a vulnerable adult.

~~((16))~~ "Willful." A person's action or inaction is willful when the person's action or inaction is intentional or knowing.

~~(a) INTENTIONAL. A person's action or inaction is intentional when the person's objective or purpose is to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.~~

~~(b) KNOWING. A person's action or inaction is knowing when the person is aware that his or her action or inaction would inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.)~~

[Statutory Authority: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g) (1) (D), 42 U.S.C. Sec. 1395i3 (g) (1) (D). WSR 21-11-108, § 388-103-0001, filed 5/19/21, effective 7/1/21.]

AMENDATORY SECTION (Amending WSR 21-11-108, filed 5/19/21, effective 7/1/21)

**WAC 388-103-0210 May a nursing assistant petition the department to have their name removed from the vulnerable adult abuse registry?**

(1) This section implements 42 U.S.C. Sec. 1396r (g) (1) (D) and Sec. 1395i-3 (g) (1) (D) regarding a singular occurrence of neglect in a nursing facility or skilled nursing facility.

(2) A nursing assistant may petition the department to have their name removed from the vulnerable adult abuse registry, subject to the requirements of this section.

(3) Preliminary requirements for the department to accept a petition:

(a) At least one year must have elapsed between the date of the final substantiated finding and the date the department receives the petition;

(b) The final substantiated finding was a singular occurrence of neglect; ~~(and)~~

(c) The singular occurrence of neglect occurred in a nursing facility or skilled nursing facility; and

~~((e))~~ (d) The petition must be in writing and contain the following information:

(i) About the petitioner:

- (A) Name;
- (B) Date of birth;
- (C) Social security number;
- (D) Mailing address; and
- (E) Phone number;

(ii) The final substantiated finding;

(iii) All documents regarding any disciplinary action, or any other negative action, taken against the petitioner under chapter 18.88A RCW;

(iv) A background check through the Washington state patrol that was completed no earlier than (~~thirty~~) 30 days prior to the date the department accepts the petition;

(v) An affidavit stating why the petitioner believes the department should grant the petition. The statement must include whether the petitioner has abused or neglected a vulnerable adult since the final substantiated finding was entered;

(vi) A list of three references for the department to contact regarding the petitioner's employment and personal history, where two references must be professional references; and

(vii) Any other relevant information the petitioner wants the department to consider.

(4) Standard for removal.

(a) The department will accept a petition if the requirements of subsection (3) of this section are met.

(b) Once the petition is accepted, the petitioner must attend an in-person interview with the department. "In-person" means either physical presence with department personnel, or visual presence through electronic means.

(c) Once the petition is accepted and the interview is completed, the department will determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect:

(i) If the department determines the petitioner's employment and personal history does not reflect a pattern of abusive behavior or neglect, the department approves the petition, and removes the petitioner's name from the vulnerable adult abuse registry.

(ii) If the department determines the petitioner's employment and personal history does reflect a pattern of abusive behavior or neglect, the department denies the petition.

(iii) If the department is unable to determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, the department denies the petition.

(5) Other information.

(a) The department will act with reasonable promptness upon receiving a petition that contains the information required under subsection (3) of this section, and make its decision within (~~sixty~~) 60 days of accepting a petition.

(b) If the department requires additional information to make its determination, a letter will be sent to the petitioner requesting the additional information. The petitioner has (~~ten~~) 10 business days to provide the information. If the department does not receive the requested information, it may be unable to determine whether petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, and deny the petition.

(c) Decisions and other correspondence regarding the petition will be mailed to the petitioner. At the petitioner's request, correspondence may also be sent via email.

(d) A petitioner does not have a right to an administrative hearing regarding any department action taken on a petition.

[Statutory Authority: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g) (1) (D), 42 U.S.C. Sec. 1395i3 (g) (1) (D). WSR 21-11-108, § 388-103-0210, filed 5/19/21, effective 7/1/21.]

**WSR 22-10-060**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed May 2, 2022, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-091.

Title of Rule and Other Identifying Information: Amending WAC 415-02-060 What happens if I do not cash a warrant or check?, 415-02-150 How is regular interest awarded and credited to Plan 1 and Plan 2 accounts?, and 415-02-510 How can a property division dissolution order give my ex-spouse an interest in my Plan 1 or 2 retirement account?

Hearing Location(s): On June 7, 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. Zoom link <https://us02web.zoom.us/j/88626236508>, Meeting ID 886 2623 6508, Dial-in 253-215-8782.

Date of Intended Adoption: June 8, 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](mailto:drs.rules@drs.wa.gov), by May 30, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by May 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DRS is establishing, by rule, a new process for periodically assessing the rate of regular interest. Additionally, DRS is establishing a new daily interest methodology for all regular interest credited to member account balances beginning July 1, 2022.

Reasons Supporting Proposal: Aligns DRS' rules with discretionary changes being made to the methodology for determining the rate of regular interest and the methodology by which regular interest will be calculated and applied to member accounts. Addresses problem in DRS' prior rule related to daily interest accrual.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 41.50 RCW.

Rule is necessary because of federal court decision, *Fowler v. Guerin*, 899 F.3d 1112 (9th Cir. 2018) (plaintiffs stated a takings claim for withheld daily interest).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DRS has consulted with tax counsel to ensure compliance with Internal Revenue Service regulations.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

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.

May 2, 2022  
Rubi Reaume  
Rules Coordinator

## OTS-3735.2

AMENDATORY SECTION (Amending WSR 01-08-043, filed 3/30/01, effective 4/30/01)

### **WAC 415-02-060 What happens if I do not cash a warrant or check?**

(1) *Warrant for defined benefit retirement allowance.* A warrant for your monthly retirement allowance will be canceled if it is not cashed within the time frame set by RCW 43.08.062. If the warrant is canceled, the department will attempt to contact you for instructions. You will not earn regular interest on the warrant amount pending reissue of your payment.

(2) *Warrant for defined benefit withdrawal.* When you request a withdrawal of some or all of your defined benefit accumulated contributions:

(a) Once the department issues the warrant you will stop receiving regular interest.

(b) Whether payable to you or to a qualified investment account, the warrant will be canceled if it is not cashed within the time frame set by RCW 43.08.062.

(c) After the department receives notice that the warrant has been canceled, the department will attempt to contact you and ask for further instructions.

(3) *Check for defined contribution distribution.* When you request a withdrawal of some or all of your defined contribution fund:

(a) The requested amount will be liquidated (~~((and the department's third-party recordkeeper will transfer the funds into a noninterest bearing account))~~).

(b) You will not receive interest, earnings, or losses after the third-party recordkeeper processes your request.

(c) Whether you request that the refund check be sent directly to you or to a qualified investment account, the check will be canceled if it is not cashed within (~~(one hundred eighty))~~ 180 days from the date on the check.

(d) If the check is canceled:

(i) The funds will continue to receive no interest, earnings, or losses while the recordkeeper waits to receive instructions from you; and

(ii) The department or the third-party recordkeeper will attempt to contact you and ask for further instructions.

[Statutory Authority: RCW 41.50.050(5), 43.08.062, 41.50.055(5), 41.50.260. WSR 01-08-043, § 415-02-060, filed 3/30/01, effective 4/30/01. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-060, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW

41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-02-060, filed 2/15/78.]

## OTS-3736.2

AMENDATORY SECTION (Amending WSR 18-07-063, filed 3/15/18, effective 4/15/18)

**WAC 415-02-150 How is regular interest ((awarded and)) credited to Plan 1 and Plan 2 individual accounts?** ((-1) You are required to make contributions to your retirement plan each pay period.

(2) Your contributions are tracked in an individual account in your name.

(3) If the amount in your individual account on the last day of a quarter is more than zero dollars, the department will calculate an amount of regular interest to be credited to your account on the last day of the quarter using the following formula:

$$1/4 \times R \times B$$

Regular interest will be credited consistent with this subsection, whether or not you are in active service.

(a) In the formula in subsection (3) of this section, "R" represents the rate of regular interest. The director has the statutory authority to set the rate of regular interest. Consistent with that authority, the rate of regular interest is set at 5.5 percent per year, until changed by the director consistent with his or her discretionary authority.

(b) In the formula in subsection (3) of this section, "B" represents the balance in your individual account at the close of business on the last day of the prior quarter. "B" may be equal to zero dollars.

(4) The calculated amount of regular interest will be credited to your individual account on the last day of the quarter. The total amount in your individual account (i.e., all your member contributions plus all the regular interest that has been credited to the account) are your "accumulated contributions."

(5) Your individual account does not "earn" or accrue regular interest on a day by day basis.

(6) Example: Jon had \$50,000 in his PERS Plan 2 individual account at the end of the day on September 30, 2017 (the last day of the third quarter). He has \$50,200 in his PERS Plan 2 individual account on December 31, 2017, immediately before regular interest for fourth quarter is credited. For fourth quarter, the regular interest to be credited to his account is calculated as follows:

$$1/4 \times 5.5\% \times \$50,000 = \$687.50$$

This regular interest is credited to his individual account for a total of \$50,887.50 (\$50,200.00 + \$687.50) at the end of the day on December 31, 2017.

(a) If Jon transfers from PERS Plan 2 to PERS Plan 3 on January 25, 2018, he receives no additional regular interest for the period from January 1 through January 25.



~~(b) If Jon separates from service on February 15, 2018, and withdraws the amount in his individual account, he receives no additional regular interest for the period from January 1 through February 15.~~

~~(7) This rule applies retroactively to November 3, 1977, to all Plan 1 and Plan 2 individual accounts in the public employees' retirement system, teachers' retirement system, law enforcement officers' and fire fighters' retirement system, school employees' retirement system, and public safety employees' retirement system, and prospectively for the Washington state patrol retirement system Plan 1 and Plan 2.)~~

The director has the statutory authority to set the terms of regular interest and modify those terms consistent with RCW 41.50.033. This rule summarizes how regular interest is credited to Plan 1 and Plan 2 individual accounts effective July 1, 2022.

(1) You are required to make contributions to your retirement plan each pay period.

(2) The department maintains an individual account in your name. In your individual account, the department tracks your contributions and the regular interest credited to your account consistent with this rule. Taken together, your contributions plus the regular interest that has been credited to your account are defined to be your accumulated contributions.

(3) Amounts in your individual account (both contributions and previously credited regular interest) accrue regular interest daily at the rate currently in effect. As long as your individual account is in existence, regular interest will continue to accrue, regardless of whether or not you are in active employment.

(4) Regular interest is calculated and credited to your account periodically.

(a) In WSPRS, regular interest is calculated and credited monthly, on the last day of the month. (If you withdraw your accumulated contributions mid-month, the department will calculate and credit your account with the regular interest accrued during the partial month prior to your withdrawal.)

(b) In all other plans 1 and 2, regular interest is calculated and credited quarterly. (If you withdraw your accumulated contributions or transfer your accumulated contributions to another plan mid-quarter, the department will calculate and credit your account with the regular interest accrued during the partial quarter prior to your withdrawal or transfer.)

(c) Because regular interest is calculated on both your contributions and previously credited regular interest, regular interest is compound interest.

(5) Rate of regular interest. The director has the statutory authority to set the rate of regular interest.

(a) During each odd year, the director will consider whether to change the rate of regular interest.

(b) If the rate is to be changed, the new rate will be effective July 1st of the following even year.

(c) In setting the rate, the director will consider the inflation assumption published by the Office of the State Actuary in the bi-annual Economic Experience Study and adopted by the Pension Funding Council.

(6) Example 1. For illustration purposes only, examples will assume the rate of regular interest is 5.5 percent per year. John begins PERS Plan 2 employment. John's employer submits the following contributions to PERS Plan 2:

<u>3/11</u>	<u>\$100</u>
<u>3/27</u>	<u>\$100</u>
<u>4/10</u>	<u>\$100</u>
<u>4/26</u>	<u>\$100</u>
<u>5/12</u>	<u>\$100</u>
<u>5/27</u>	<u>\$100</u>
<u>6/11</u>	<u>\$100</u>
<u>6/25</u>	<u>\$100</u>
<u>7/11</u>	<u>\$100</u>

(a) On March 31st, regular interest of \$0.36 is credited to John's account. This is calculated as follows (except where noted, calculations are rounded to four decimal places):

(i) \$0.2411 on the account balance of \$100 from 3/12 to 3/27. That is \$100 for 16 days, the regular interest for this balance is:

$$\underline{.055 * 16/365 * 100 = \$0.2411}$$

(ii) \$0.1205 on the account balance of \$200 from 3/28 to 3/31. That is \$200 for four days, the regular interest for this balance is:

$$\underline{.055 * 4/365 * 200 = \$0.1205}$$

(iii) The total regular interest credited for the first quarter is \$0.36 (\$0.2411 + \$0.1205 = \$0.3616 which rounds to \$0.36).

(iv) The balance in John's account on March 31st, is \$200.36 - New Contributions (\$200) + Regular Interest (\$0.36).

(b) On June 30th, regular interest of \$6.56 is credited to John's account. This is calculated as follows:

(i) \$0.3019 on the account balance of \$200.36 from 4/1 to 4/10. That is \$200.36 for 10 days, the regular interest for this balance is:

$$\underline{.055 * 10/365 * 200.36 = \$0.3019}$$

(ii) \$0.7242 on the account balance of \$300.36 from 4/11 to 4/26. That is \$300.36 for 16 days, the regular interest for this balance is:

$$\underline{.055 * 16/365 * 300.36 = \$0.7242}$$

(iii) \$0.9653 on the account balance of \$400.36 from 4/27 to 5/12. That is \$400.36 for 16 days, the regular interest for this balance is:

$$\underline{.055 * 16/365 * 400.36 = \$0.9653}$$

(iv) \$1.1310 on the account balance of \$500.36 from 5/13 to 5/27. That is \$500.36 for 15 days, the regular interest for this balance is:

$$\underline{.055 * 15/365 * 500.36 = \$1.1310}$$

(v) \$1.3570 on the account balance of \$600.36 from 5/28 to 6/11. That is \$600.36 for 15 days, the regular interest for this balance is:

$$\underline{.055 * 15/365 * 600.36 = \$1.3570}$$

(vi) \$1.4775 on the account balance of \$700.36 from 6/12 to 6/25. That is \$700.36 for 14 days, the regular interest for this balance is:

$$\underline{.055 * 14/365 * 700.36 = \$1.4775}$$

(vii) \$0.6030 on the account balance of \$800.36 from 6/26 to 6/30. That is \$800.36 for five days, the regular interest for this balance is:

$$.055 * 5/365 * 800.36 = \$0.6030$$

(viii) The total regular interest credited for the second quarter is \$6.56 (\$0.3019 + \$0.7242 + \$0.9653 + \$1.1310 + \$1.3570 + \$1.4775 + \$0.6030 = \$6.5599 which rounds to \$6.56).

(ix) The account balance on June 30th is \$806.92 - March 31st Balance (\$200.36) + New Contributions (\$600) + Regular Interest (\$6.56).

(7) Example 2. John terminates PERS Plan 2 employment on July 1st, after making one contribution for the third quarter. He chooses to withdraw the amount in his individual account. On July 17th, he receives a warrant for \$907.74, calculated as follows:

(a) John receives \$2.16 in regular interest for the period from July 1st through July 17th.

(i) \$1.3375 on the account balance of \$806.92 from 7/1 to 7/11. That is \$806.92 for 11 days, the regular interest for this balance is:

$$.055 * 11/365 * \$806.92 = \$1.3375$$

(ii) \$0.8200 on the account balance of \$906.92 from 7/12 to 7/17. That is \$906.92 for six days, the regular interest for this balance is:

$$.055 * 6/365 * \$906.92 = \$0.8200$$

(iii) The total regular interest credited for the third quarter is \$2.16 (\$1.3375 + \$0.8200 = \$2.1575 which rounds to \$2.16).

(b) The total withdrawal is \$909.08 - June 30th Balance (\$806.92) + New Contributions (\$100) + Regular Interest (\$2.16).

[Statutory Authority: RCW 41.50.033 and 41.50.050. WSR 18-07-063, § 415-02-150, filed 3/15/18, effective 4/15/18.]

## OTS-3737.2

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

**WAC 415-02-510 How can a property division dissolution order give my ex-spouse an interest<sup>1</sup> in my Plan 1 or 2 retirement account?**

(1) **Who may use this section?**

(a) You **MUST** use this section if you are a member of LEOFF Plan 1, WSPRS Plan 1, JRF or JRS, or a **nonvested** member of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, TRS Plan 1 or 2, or WSPRS Plan 2.

(b) You **MAY** use this section if you are a **vested** member of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, TRS Plan 1 or 2, or WSPRS Plan 2. If you are splitting your retirement account with your ex-spouse, use WAC 415-02-520.

(2) **What language must the property division dissolution order or amendment include?** The order must include the language in RCW 41.50.670(2), provided below. The order or amendment must state either a specific dollar amount or percentage of the benefit. It cannot state both. (See example in WAC 415-02-500(15).)

If \_\_\_\_\_ (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to \_\_\_\_\_ (the obligee) \_\_\_\_\_ dollars from such payments or \_\_\_\_\_ percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If \_\_\_\_\_ (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to \_\_\_\_\_ (the obligee) \_\_\_\_\_ dollars plus regular interest at the rate paid by the department of retirement systems on member contributions. Such regular interest to accrue from the date of this order's entry with the court of record.

**(3) How will my account be affected if the department accepts the property division dissolution order BEFORE I retire?**

(a) Your ex-spouse will not receive any payments from the department until you terminate your employment or retire.

(b) If you terminate your employment and request a withdrawal of your accumulated contributions, the department will pay your ex-spouse his or her share when you receive your payment. If you terminate your employment and do not request a withdrawal of contributions, your ex-spouse will be unable to receive his or her share until you withdraw your accumulated contributions.

(c) If you die before retirement, the department will pay your ex-spouse his or her share of your accumulated contributions in a lump-sum payment.

**(4) How will my account be affected if the department accepts the property division dissolution order AFTER I retire?**

(a) If included in the dissolution order, the department will begin paying your ex-spouse his or her portion of your monthly retirement allowance the first month after the department has accepted the order.

(b) If your ex-spouse dies before you, the portion of your monthly retirement allowance that was being paid to your ex-spouse will be paid to you.

(c) If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least (~~thirty~~) 30 days before you retired and the order required the department to name your ex-spouse as a survivor beneficiary (if allowed by your retirement system and plan). See RCW 41.50.700(1) and 41.50.790.

(d) If you are a member of LEOFF Plan 1 or WSPRS Plan 1 and if one of the provisions in RCW 41.50.700(3) applies:

(i) Your ex-spouse may be eligible to receive payments for the life of your surviving spouse; or

(ii) If you are a member of LEOFF Plan 1, your ex-spouse may be eligible to receive payments for his or her lifetime.

**(5) Is there a maximum payment amount that a property division dissolution order can award to my ex-spouse?** Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

(6) **If the property division dissolution order directs the department to make payments to my ex-spouse, how will the payments be made?** The department will make the required payments as specified in the dissolution order directly to your ex-spouse.

~~(7) ((How much is the fee the department charges for making payments directly to my ex-spouse? See RCW 41.50.680 and WAC 415-02-500(11) for information.~~

~~(8))~~ **What happens if I transfer to Plan 3 after the department has accepted my property division dissolution order or most recent amendment?** See WAC 415-02-550 for information.

~~((9))~~ **(8) Can I amend my existing order to remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-520(9) for the language that must be used.

~~((10))~~ **(9) Terms used:**

(a) Department's acceptance - That the department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.

(b) Dissolution order - RCW 41.50.500.

(c) Obligee - RCW 41.50.500(5).

(d) Obligor - RCW 41.50.500(6).

(e) Plan 3 - WAC 415-111-100.

(f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnote to section:

<sup>1</sup> When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement allowance or a portion of your contributions to your ex-spouse.

[Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-510, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-510, filed 5/27/03, effective 7/1/03.]

**WSR 22-10-068**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
[Filed May 3, 2022, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-127.

Title of Rule and Other Identifying Information: Amending WAC 415-02-030 Definitions.

Hearing Location(s): On June 7, 2022, at 10:30 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Zoom link <https://us02web.zoom.us/j/82812366000>, Meeting ID 828 1236 6000, Dial-in 253-215-8782.

Date of Intended Adoption: June 8, 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](mailto:drs.rules@drs.wa.gov), by May 30, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by May 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule-making action will clarify when a member's choice for Plan 2 or Plan 3 becomes irrevocable.

Reasons Supporting Proposal: To make clear Internal Revenue Service requirements of not allowing a second choice regarding retirement plan options.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 41.50 RCW.

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, 360-664-7124.

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.

May 3, 2022  
Rubi Reaume  
Rules Coordinator

**OTS-3626.1**

AMENDATORY SECTION (Amending WSR 21-16-020, filed 7/23/21, effective 8/23/21)

**WAC 415-02-030 Definitions.** This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010 (TRS); RCW 41.35.010 (SERS); RCW 41.40.010 (PERS); and RCW 41.37.010 (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120.

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the (~~twelve~~) 12 named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is **not** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means (~~thirty~~) 30 consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010 and 41.32.345 (TRS); RCW 41.35.010 (SERS); RCW 41.37.010 (PSERS); and RCW 41.40.010 (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030 (LEOFF), 41.32.010 (TRS), 41.34.020 (Plan 3), 41.35.010 (SERS), 41.37.010 (PSERS) and 41.40.010 (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500.

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030.

(18) **First employed by an eligible employer in an eligible position** means, for purposes of plan default, first employment with an employer, in an eligible position, with which a member has fully exhausted their plan choice rights.

(19) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

(20) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(21) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(22) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least (~~twenty~~) 20 service credit years, that is increased by (~~twenty-five one-hundredths of one~~) 0.0025 percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(23) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(24) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(25) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(26) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(27) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(28) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work in a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(a) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or



(b) Does not evaluate staff.

(29) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

(30) **Participant** means an eligible employee who participates in a deferred compensation plan.

(31) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

(32) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(33) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

(34) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

(35) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(36) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(37) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

(38) **Plan choice rights** refers to a member's right, within a ~~((ninety-day))~~ 90-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3 or be defaulted into a plan after the full ~~((ninety-day))~~ 90-day period has expired.

(a) A member will be reported in Plan 2 until plan choice rights have been exercised.

(b) A member must make a choice within ~~((ninety))~~ 90 calendar days (computed as described in RCW 1.12.040) from the first day of employment in an eligible position.

(c) A member will be defaulted into a plan if they continue employment in an eligible position past the ~~((ninety-day))~~ 90-day plan choice period without making a choice.

(d) A member may exercise plan choice rights only once per system.

(e) Once a member makes a plan choice, that choice cannot be changed, even if the member is still within 90 days of hire.

(39) **Plan year** is the ~~((twelve-month))~~ 12-month period that begins on January 1st and ends on December 31st of the same calendar year.

(40) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

(41) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

(42) **Public record** is defined in RCW 42.56.010.

(43) **Restoration** is the process of restoring a member's service credit for prior periods.

(44) **Retirement system employer** - See "employer."

(45) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

(46) **Separation date** is the date a member ends employment in a position eligible for retirement.

(47) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

(48) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

(49) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

(50) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

(51) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

(52) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

(53) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

(54) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-02-030, filed 7/23/21, effective 8/23/21; WSR 20-13-064, § 415-02-030, filed 6/15/20, effective 7/16/20; WSR 20-01-079, § 415-02-030, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-02-030, filed 8/11/16, effective 9/11/16; WSR 16-08-008, § 415-02-030, filed 3/24/16, effective 4/24/16; WSR 10-24-099, § 415-02-030, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5) and 41.04.640. WSR 09-01-021, § 415-02-030, filed 12/8/08, effective 1/8/09. Statutory Authority: RCW 41.50.050(5). WSR 06-18-009, § 415-02-030, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.40.010(42), 41.40.037. WSR 04-04-037, § 415-02-030, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5). WSR 02-23-037, § 415-02-030, filed 11/13/02, effective 1/1/03; WSR 02-01-120, § 415-02-030, filed 12/19/01, effective 1/19/02. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-030, filed 4/21/00, effective 5/22/00; WSR 94-09-039, § 415-02-030, filed 4/19/94, effective 5/20/94; Order 4, § 415-02-030, filed 7/27/77.]

**WSR 22-10-069**  
**PROPOSED RULES**  
**SECRETARY OF STATE**  
[Filed May 3, 2022, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-148.

Title of Rule and Other Identifying Information: Voter secrecy on ballot return envelopes, ballot oath declarations and other ballot return forms.

Hearing Location(s): On June 13, 2022, at 1:00 p.m., at 520 Union Avenue, Olympia, 98504. The hearing will be conducted using Teams to join the hearing a person can call phone 1-206-899-2560 and enter the Conference ID 794 302 13#. People will be able to hear and comment.

Date of Intended Adoption: June 14, 2022.

Submit Written Comments to: Fina Ormond, P.O. Box 40229, Olympia, WA 98504, email fina.ormond@sos.wa.gov, fax 360-664-4169.

Assistance for Persons with Disabilities: Contact Fina Ormond, phone 360-902-4146, fax 360-664-4169, email Fina.ormond@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules in conformance with recent legislation. Ensuring voter secrecy on ballot envelopes, by protecting signature images, and email addresses and phone numbers provided by voters on ballot return envelopes and other forms.

Reasons Supporting Proposal: Consistency in operation in all county election offices within the state.

Statutory Authority for Adoption: RCW 29A.04.611; chapter 140, Laws of 2022.

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

Name of Proponent: Randy Bolerjack, deputy secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

May 3, 2022  
Randy Bolerjack  
Deputy Secretary of State

**OTS-3424.4**

NEW SECTION

**WAC 434-250-380 Disclosure of voter signatures.** (1) In-person inspection of unredacted ballot return envelopes, ballot declarations, and signature correction forms is authorized, so long as photocopying,

photographs, and other types of image reproduction of voter signatures, phone numbers, and email addresses are prohibited.

(2) Upon receiving a public records request for ballot return envelopes, ballot declarations, or signature correction forms, an agency should offer the requestor the option of receiving redacted copies or inspecting unredacted versions in-person.

(3) For purposes of this regulation, "signature correction form" means any form submitted by a voter for the purpose of curing a missing or mismatched signature on a ballot declaration or otherwise updating the voter signature.

(4) For purposes of this section, "voter signature" means any original handwritten signature or image of the voter's signature.

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## WSR 22-10-079

## PROPOSED RULES

## HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2022-01—Filed May 3, 2022, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-095.

Title of Rule and Other Identifying Information: **The following sections in chapter 182-30 WAC are revised:** WAC 182-30-020 Definitions, 182-30-040 Premium payments and premium refunds, 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors?, 182-30-090 When may a subscriber change health plans?, 182-30-100 When may a school employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)?, and 182-30-130 What are the requirements for a school employees benefits board (SEBB) organization engaging in local negotiations regarding SEBB benefits eligibility criteria?

**The following sections in chapter 182-31 WAC are revised:** WAC 182-31-020 Definitions, 182-31-060 Who is eligible to participate in the salary reduction plan?, 182-31-070 Is dual enrollment in school employees benefits board (SEBB) prohibited and public employees benefits board (PEBB) prohibited?, 182-31-080 When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment?, 182-31-090 When is an enrollee eligible to continue school employees benefits board (SEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)?, 182-31-150 When may subscribers enroll or remove eligible dependents?, and 182-31-190 School employees benefits board (SEBB) wellness incentive program eligibility and procedural requirements.

**The following sections in chapter 182-32 WAC are revised or new:** WAC 182-32-020 Definitions, 182-32-058 Service or serve, 182-32-064 Applicable rules and laws, 182-32-066 Burden of proof, standard of proof, and presumptions, 182-32-2000 Brief adjudicative proceedings, 182-32-2005 Record—Brief adjudicative proceeding, 182-32-2050 How can a school employee appeal a decision regarding the administration of benefits offered under the salary reduction plan?, 182-32-2080 Who can appeal or represent a party in a brief adjudicative proceeding?, 182-32-2085 Continuances, 182-32-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding, 182-32-2105 Withdrawing the request for a brief adjudicative proceeding or review of an initial order, 182-32-2110 Final order, 182-32-2120 Request for reconsideration, 182-32-2135 Petitions for judicial review—Service on the authority (new section), 182-32-2150 Review officer or officers—Designation and authority, 182-32-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing, 182-32-3170 Final order deadline—Required information, 182-32-3175 How to request a review of an initial order by the office of administrative hearings (new section), and 182-32-3210 Petitions for judicial review—Service on the authority (new section).

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (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. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_edPzYSMR9CMXCEzVivwWw](https://us02web.zoom.us/webinar/register/WN_edPzYSMR9CMXCEzVivwWw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 8, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1305, fax 360-586-9727, telecommunication[s] relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend some of the existing rules and to create new rules to support the school employees benefits board (SEBB) program:

**Make technical amendments:**

- Amended WAC 182-30-060, 182-30-100, 182-30-130, 182-31-060, 182-31-150, and 182-32-2050 to implement limited purpose FSA.
- Amended WAC 182-30-060 to clarify SEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified.
- Amended WAC 182-30-090 to clarify when a dental plan is considered available and to clarify a subscriber or their dependent may change medical plans when they are no longer enrolled in a health savings account.
- Amended WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150 to clarify a special open enrollment related to a subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility.
- Amended WAC 182-30-100 to include school employees cannot enroll in a medical FSA or limited FSA in the same year and which FSA they will be enrolled in and provided a technical correction when a school employee or a school employee's dependent has a change in enrollment under an employer-based dependent care assistance program during its annual open enrollment.
- Amended WAC 182-31-080 to clarify a special open enrollment related to the school employee's dependent has a change in their employment that affects the school employee's eligibility or their dependent's eligibility.
- Amended WAC 182-31-090 to remove a WAC citation.
- Amended WAC 182-31-150 to clarify a dependent with more than one source of eligibility for enrollment in public employees benefits board and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either program, to clarify when a national medical support notice requires a subscriber to cover a dependent child in health plan coverage, to clarify enrollment and disenrollment requirements for supplemental dependent life insurance or AD&D insurance, and to remove WAC references.
- Amended WAC 182-31-190 to clarify the wellness incentive's eligibility.
- Made global amendments in chapter 182-32 WAC to update the use of reviewing officer or officers.

**Amend rules to improve the administration of the SEBB program:**

- Amended WAC 182-30-020 and 182-31-020 to update the definitions of annual open enrollment, life insurance, salary reduction plan, SEBB program, special open enrollment, and to create a new definition of limited purpose flexible spending arrangement or limited purpose FSA.
- Amended WAC 182-30-040 to include a school employee who is on a leave of absence and maintains eligibility for the employer contribution will have their premiums waived for their employee-paid LTD insurance for the first 90 days.
- Amended WAC 182-30-090 to clarify that a dental plan is available if it is located within 50 miles of the subscriber's residence.
- Amended WAC 182-31-070 to include additional WAC references, to clarify specific timelines when an employee must resolve their dual enrollment, and to add new language related to reinstating coverage retroactively.
- Amended WAC 182-31-150 to include a notification requirement for subscribers when a dependent is no longer eligible for supplemental dependent life insurance or AD&D insurance coverage and methods of submitting a request to remove an eligible dependent from supplemental dependent life insurance or AD&D insurance coverage.
- Amended WAC 182-32-020 to update the definitions of life insurance and salary reduction plan, and to create a new definition of limited purpose flexible spending arrangement or limited purpose FSA.
- Amended WAC 182-32-058 to clarify when service is complete.
- Amended WAC 182-32-066 to use preponderance of the evidence instead of substantial evidence when addressing presumptions
- Amended WAC 182-32-2000 to clarify the authority may use the brief adjudicative proceedings for issues identified in the chapter.
- Amended WAC 182-32-2100 to include both the appellant and the authority may request review of an initial order and the appellant may request review of the initial order by filing a written request or making an oral request with the SEBB appeals unit.
- Created WAC 182-32-2135 to address petitions for judicial review - service on the authority.
- Amended WAC 182-32-2150 to include a reviewing officer or officers must make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing, and to remove the reviewing officer or officers will issue a final order that will convert the matter to a formal administrative hearing.
- Amended WAC 182-32-2160 to clarify the presiding officer or the reviewing officer or officers may convert a brief adjudicative proceeding to a formal administrative hearing at any time before the final order is issued on motion by the appellant and their representative and reviewing officer or officers.
- Amended WAC 182-32-3170 to include required information when the office of administrative hearings is holding a formal administrative hearing on behalf of the authority and to clarify the final order will only be issued by the authority.
- Created WAC 182-32-3175 on how to request a review of an initial order issued by the office of administrative hearings.
- Created WAC 182-32-3210 to address petitions for judicial review - service on the authority.

Reasons Supporting Proposal: See purpose statement.

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, 26 U.S.C. Sec. 125.

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: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716; 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

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

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

May 3, 2022

Wendy Barcus

Rules Coordinator

## OTS-3739.1

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

**WAC 182-30-020 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). School employees (~~(participating)~~) eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), ~~((or))~~ the medical flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.



"Benefits administrator" means any person or persons designated by the SEBB organization that trains, communicates, and interacts with school employees as the subject matter expert for eligibility, enrollment, and appeals for SEBB benefits.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of SEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship. It does not include medical, vision, or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-31-040 or 182-30-130.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or ~~((ten))~~ 10 percent of the

premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Life insurance" means basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and any employee-paid long-term disability insurance offered by the SEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than (~~ninety-five~~) 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least (~~ninety-five~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- All employees of school districts and charter schools established under chapter 28A.710 RCW;
- Represented employees of educational service districts; and
- Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130) and eligible dependents (as described in WAC 182-31-140).

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, school employees may enroll in or waive enrollment (see definition of "waive" in this section). School employees eligible to participate in the salary reduction((s)) plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organization, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the school employee in addition to the coverage provided by the school employees benefits board (SEBB) organization.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Waive" means an eligible school employee affirmatively declining enrollment in SEBB medical because the school employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-31-080. A school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-30-020, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-020, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-020, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-020, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-116, filed 6/21/21, effective 1/1/22)

**WAC 182-30-040 Premium payments and premium refunds.** School employees benefits board (SEBB) insurance coverage premiums and applicable premium surcharges for all subscribers are due as described in this section, except when a SEBB organization is correcting its enrollment error as described in WAC 182-30-060 (4) or (5).

(1) **Premium payments.** SEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which SEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of SEBB insurance coverage and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in continuation coverage as described in WAC 182-31-090, 182-31-100, 182-31-120, or 182-31-130, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) or the contracted vendor no later than (~~forty-five~~) 45 days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing SEBB medical must be made to the HCA as well as premiums associated with continuing SEBB dental or vision insurance coverage. Premiums associated with life insurance coverage and accidental death and dismemberment (AD&D) coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

(b) For school employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the SEBB organization or contracted vendor. If a school employee elects supplemental coverage or employee-paid long-term disability (LTD) insurance, or is enrolled in employee-paid LTD insurance, as described in WAC 182-30-080 (1) (a) or (3) (a) or is enrolled in employee-paid LTD insurance as described in WAC 182-30-080 (1) (b) the school employee is responsible for payment of premiums from the month the supplemental coverage or employee-paid LTD insurance begins.

Exception:

A school employee who is on a leave of absence and maintains eligibility for the employer contribution, will have their premiums waived for their employee-paid LTD insurance for the first 90 days. For this purpose, "leave of absence" is defined as a paid or unpaid temporary or indefinite administrative leave, involuntary leave, sick leave, or insurance continued under the federal Family and Medical Leave Act, or paid family and medical leave program as described in WAC 182-31-110.

(c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the SEBB organiza-

tion, subscriber, or a subscriber's legal representative to the HCA or the contracted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for (~~(thirty)~~) 30 days will be considered delinquent. A subscriber is allowed a grace period of (~~(thirty)~~) 30 days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium surcharges. If a subscriber, who is not eligible for the employer contribution, has monthly premiums or applicable premium surcharges remain unpaid for (~~(sixty)~~) 60 days from the original due date, the subscriber's SEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan up to (~~(twelve)~~) 12 months in duration with the subscriber or the subscriber's legal representative upon request.

(d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA or the contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for (~~(thirty)~~) 30 days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or the contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for (~~(thirty)~~) 30 days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** SEBB insurance coverage premiums and applicable premium surcharges will be refunded using the following methods:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the SEBB organization any excess premiums and applicable premium surcharges paid during the (~~(sixty)~~) 60 day adjustment period, except as indicated in WAC 182-31-120.

(b) If a SEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-32-2010, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within (~~(sixty)~~) 60 days after the event that created a change of premiums, the SEBB director, the SEBB director's designee, or the SEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges that does not exceed (~~(twelve)~~) 12 months of premiums; and

(ii) Approve the enrollment change that was originally requested and which forms the basis for the refund.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time they were enrolled under the federal program if approved by the SEBB director or the SEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the SEBB organization, subscriber, or beneficiary.

(e) SEBB organization errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the school employee or beneficiary as described in WAC 182-30-060 (4) and (5).

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-11 and 2021-12. WSR 21-13-116 (Admin #2021-01.03), § 182-30-040, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-040, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-040, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-040, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-116, filed 6/21/21, effective 1/1/22)

**WAC 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors?** (1) A school employees benefits board (SEBB) organization or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify a school employee of their eligibility for SEBB benefits and the employer contribution as described in WAC 182-31-030;

(b) Failure to enroll a school employee or their dependents in SEBB benefits as elected by the school employee, if the election was timely;

(c) Failure to enroll a school employee and their dependents in SEBB benefits as described in WAC 182-30-080 (1)(b);

(d) Failure to accurately reflect a school employee's premium surcharge attestation on the school employee's account;

(e) Enrolling a school employee or their dependents in SEBB insurance coverage when they are not eligible as described in WAC 182-31-040 or 182-31-140 and it is clear there was no fraud or intentional misrepresentation by the school employee involved; or

(f) Providing incorrect information, via a benefits administrator or contracted vendor, regarding SEBB benefits to the employee that they relied upon.

(2) The SEBB organization or the applicable contracted vendor must enroll the school employee and the school employee's dependents, as elected, or terminate enrollment in SEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

**(3) Enrollment or termination.**

(a) SEBB medical, vision, and dental enrollment is effective (~~at a minimum~~) the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section;

(b) Basic life, basic accidental death and dismemberment (AD&D), employer-paid long-term disability (LTD) insurance, and employee-paid

LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)) enrollment is retroactive to the first day of the month following the day the school employee became newly eligible, or the first day of the month the school employee regained eligibility, as described in WAC 182-30-080;

(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the school employee became newly eligible if the school employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the school employee's application for this coverage). If a SEBB organization enrollment error occurred when the school employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-30-080(3):

(i) Supplemental life and supplemental AD&D is enrolled the first day of the month the school employee regained eligibility, at the same level of coverage the school employee continued during the period of leave, without evidence of insurability.

(ii) If the school employee was eligible to continue supplemental life insurance and supplemental AD&D insurance during the period of leave but did not, the school employee must provide evidence of insurability and receive approval from the contracted vendor.

(iii) School employees may not continue employee-paid LTD insurance while on leave without pay as described in WAC 182-31-100. Employee-paid LTD insurance is reinstated the first day of the month the employee regains eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(d) If the school employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to (~~sixty~~) 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If a school employee was not enrolled in a medical FSA, limited purpose FSA, or DCAP as elected, the school employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the school employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's SEBB benefits will be terminated prospectively effective as of the last day of the month.

**(4) Premium payments.**

(a) The SEBB organization must remit to the authority the employer contribution and the school employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD insurance starting the date SEBB benefits begin as described in subsections (3) and (5)(a)(i) of this section. If a SEBB organization failed to notify a newly eligible school employee of their eligibility for SEBB benefits, the SEBB organization may only collect the school employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the school employee was notified.

(b) When a SEBB organization fails to correctly enroll the amount of employee-paid LTD insurance elected by the school employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the school employee is responsible for premiums for the most recent (~~twenty-four~~) 24 months of coverage. The SEBB organization is responsible for additional months of premiums; and

(ii) When a premium refund is due to the school employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent (~~twenty-four~~) 24 months of coverage. The SEBB organization is responsible for additional months of premium refunds after the (~~twenty-four~~) 24 months of coverage and the overall refunding process to the school employee.

(c) When a SEBB organization mistakenly enrolls a school employee or their dependents as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the SEBB organization to the school employee without rescinding the insurance coverage.

(5) **Recourse.**

(a) School employee eligibility for SEBB benefits begins on the first day of the month following the date eligibility is established or the first day of work for school employees who start on or before the first day of school as described in WAC 182-31-040. Dependent eligibility is described in WAC 182-31-140, and dependent enrollment is described in WAC 182-31-150. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c), and (d) of this section, the SEBB organization must work with the school employee, and receive approval from the authority, to implement retroactive SEBB benefits within the following parameters:

(i) Retroactive enrollment in a SEBB insurance coverage;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid by the school employee or dependent for medical, vision, and dental premiums;

(iv) Reimbursement of amounts paid by the school employee for the premium surcharges;

(v) Other legal remedy received or offered; or

(vi) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for SEBB benefits.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-11 and 2021-12. WSR 21-13-116 (Admin #2021-01.03), § 182-30-060, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolution 2020-06. WSR 20-16-066 (Admin #2020-03), § 182-30-060, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-060, filed 7/1/19, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

**WAC 182-30-090 When may a subscriber change health plans?** A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the school employees benefits board (SEBB) annual open enrollment period. The subscriber must submit the required en-



rollment forms to change their health plan. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than a school employee gaining initial eligibility for SEBB benefits as described in WAC 182-31-040 or regaining eligibility for SEBB benefits as described in WAC 182-30-080. The change in enrollment must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, a subscriber must submit the required enrollment forms. The forms must be received no later than (~~sixty~~) 60 days after the event occurs. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or the eligibility certification. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

**Note:** A subscriber may not change their health plan if their state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for the employer contribution toward their employer-based group health plan;

(d) Subscriber has a change in employment from a SEBB organization to a public school district that results in the subscriber having different medical plans available. The subscriber may change their election if the change in employment causes:

(i) The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or

(ii) The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.

(iii) As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

**Note:** As used in (e) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(f) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan, otherwise there will be limited accessibility to network providers and covered services;

**Exception:** A dental plan is considered available if a provider is (~~available~~) located within (~~fifty~~) 50 miles of the subscriber's new residence.

(g) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(i) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-30-085(2);

(k) Subscriber or a subscriber's dependent's current (~~health~~) medical plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(l) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment that could function as a reduction in benefits for the subscriber or the subscriber's dependent. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period;  
or  
(v) Treatment for a high-risk pregnancy.

(3) If the school employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-30-090, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-090, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2018 c 260. WSR 20-01-082, § 182-30-090, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-090, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-090, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

**WAC 182-30-100 When may a school employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)?** A school employee who is eligible to participate in the salary reduction plan as described in WAC 182-31-060 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-31-040 and enrolling as described in WAC 182-30-080(1).

(2) **During annual open enrollment:** An eligible school employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their school employees benefits board (SEBB) organization. An eligible school employee may elect to enroll or reenroll in the medical FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their SEBB organization or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

**Note:**

1. School employees (~~enrolled~~) cannot enroll in a medical FSA and a limited purpose FSA in the same year.

2. School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect (~~both will only be enrolled~~) enrollment in the HDHP with a HSA and a medical FSA will instead be enrolled in a limited purpose FSA.

3. School employees who are not enrolled in a HDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.

(3) **During a special open enrollment:** A school employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, limited purpose FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enroll-

ment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the school employee must submit the required form to their SEBB organization. The SEBB organization must receive the required form and evidence of the event that created the special open enrollment no later than (~~sixty~~) 60 days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A school employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age (~~twenty-six~~) 26 or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The school employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution toward their employer-based group health plan;

**Exception:** As used in (a)(v) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) School employee or a school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(vii) School employee or a school employee's dependent has a change in residence that affects health plan availability;

(viii) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States, and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) School employee or a school employee's dependent enrolls in coverage under medicare or the school employee or a school employee's dependent loses eligibility for coverage under medicare;

(xiii) School employee or a school employee's dependent's current medical plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the school employee or a school employee's dependent is no longer eligible for a HSA;

(xiv) School employee or a school employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the school employee or a school employee's dependent. The school employee may not change their health plan election if the school employee's or dependent's physician stops participation with the school employee's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy;

- Treatment following a recent organ transplant;

- A scheduled surgery;

- Recent major surgery still within the postoperative period; or

- Treatment for a high-risk pregnancy.

(xv) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

(xvi) Subscriber has a change in employment from a SEBB organization to a public school district that results in the subscriber having different medical plans available, and the subscriber changes their election. The subscriber may change their election if the change in employment causes:

- The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or
- The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.
- As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

If the school employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical FSA and limited purpose FSA.** A school employee may enroll or revoke their election and make a new election under the medical FSA or limited purpose FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- School employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age (~~(twenty-six)~~) 26 or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for the medical FSA or limited purpose FSA;

(v) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) School employee or a school employee's dependent enrolls in coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) School employee or a school employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** A school employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the state registered domestic partner qualifies as a tax dependent of the school employee;
- Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) School employee or school employee's dependent has a change in enrollment under an employer-based (~~group health plan~~) DCAP during its annual open enrollment that does not align with the SEBB annual open enrollment;

(iv) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) School employee or school employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b) (1);

(vi) School employee's dependent care provider imposes a change in the cost of dependent care; school employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the school employee as defined in IRC 26 U.S.C. Sec. 152.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-30-100, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-100, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2018 c 260. WSR 20-01-082, § 182-30-100, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-100, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW

41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-100, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

**WAC 182-30-130 What are the requirements for a school employees benefits board (SEBB) organization engaging in local negotiations regarding SEBB benefits eligibility criteria?** This section describes the terms and conditions for a school employees benefits board (SEBB) organization that is engaging in local negotiations regarding eligibility for school employees as described in RCW 41.05.740 (6)(e).

(1) A SEBB organization must provide a current ratified collective bargaining agreement (CBA) and information on all eligible school employees under the CBA to the health care authority (HCA) by the start of the school year.

(2) A SEBB organization must offer all of, and only, the following SEBB benefits to employees and their dependents:

- (a) Medical (includes the wellness incentive);
- (b) Dental;
- (c) Vision;
- (d) Basic life;
- (e) Basic accidental death and dismemberment (AD&D) insurance.

(3) A SEBB organization must provide an employer contribution as described below:

(a) The subscriber-only employer medical contribution (EMC) amount for school employees eligible under RCW 41.05.740 (6)(d) multiplied by the premium tier ratio associated with the enrollment tier selected by the school employee;

(b) One hundred percent of the cost for the school employee dental plan multiplied by the enrollment tier selected by the school employee;

(c) One hundred percent of the cost for the school employee vision plan multiplied by the enrollment tier selected by the school employee;

(d) One hundred percent of the cost for basic life and accidental death and dismemberment (AD&D) insurance;

(e) One hundred percent of the cost of the administrative fee charged by the HCA; and

(f) One hundred percent of the monthly K-12 remittance for deposit in the retired school employees' subsidy account.

(4) A SEBB organization providing SEBB benefits as described in this section may do so by group as described in (a) through (d) of this subsection:

- (a) The entire SEBB organization;
- (b) A entire collective bargaining unit;
- (c) A group containing all nonrepresented school employees; or
- (d) A combination of (b) and (c) of this subsection.

(5) A SEBB organization must establish a threshold of anticipated work hours no less than (~~one hundred eighty~~) 180 hours but less than the minimum hours to meet SEBB eligibility under WAC 182-31-040 within a school year.

(6) All of the rules in chapters 182-30, 182-31, and 182-32 WAC apply, except for all rules governing SEBB benefits that are not available to school employees whose eligibility is established under



this section. The following benefits are not available to school employees whose eligibility is established under this section:

- (a) Long-term disability (LTD);
  - (b) Medical flexible spending arrangement (FSA) or limited purpose FSA;
  - (c) Dependent care assistance program (DCAP);
  - (d) Supplemental life insurance; and
  - (e) Supplemental accidental death and dismemberment insurance.
- (7) If a school employee waives medical under this section, there is no requirement to send the employer contribution to the HCA as required in WAC 182-30-070(4).
- (8) Eligibility determinations must align with the SEBB program's status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the SEBB organization may only consider school employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions to be eligible.
- (9) A SEBB organization providing SEBB benefits to a group of school employees under this section must notify the SEBB program each time the CBA is renegotiated.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-30-130, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions 2020-04. WSR 20-16-065 (Admin #2020-02), § 182-30-130, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-130, filed 7/1/19, effective 8/1/19.]

## OTS-3741.1

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

**WAC 182-31-020 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). School employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), ((~~or~~)) the medical

flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of SEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer-based group health plan" means group medical, group vision, and group dental related to a current employment relationship. It does not include medical, vision, or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 182-30-130 and 182-31-040.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in school employees benefits board (SEBB) benefits, and for whom applicable premium payments have been made.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provi-

ded by a contracted vendor or self-insured plans administered by the HCA.

"Layoff," for purposes of this chapter, means a change in employment status due to a SEBB organization's lack of funds or a SEBB organization's organizational change.

"Life insurance" means basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the SEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than (~~ninety-five~~) 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least (~~ninety-five~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- All employees of school districts and charter schools established under chapter 28A.710 RCW;
- Represented employees of educational service districts; and
- Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district

or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"School year" means school year as defined in RCW 28A.150.203(11).

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other school employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130) and eligible dependents (as described in WAC 182-31-140).

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, school employees may enroll in or waive enrollment (see definition of "waive" in this section). School employees eligible to participate in the salary reduction((s)) plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific SEBB benefits, see WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the school employee in addition to the coverage provided by the school employees benefits board (SEBB) organization.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Waive" means an eligible school employee affirmatively declining enrollment in SEBB medical because the school employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-31-080. A school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-31-020, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-020, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-020, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-020, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

**WAC 182-31-060 Who is eligible to participate in the salary reduction plan?** School employees eligible for the employer contribution toward school employees benefits board (SEBB) benefits are eligible to participate in the premium payment plan under the state's salary reduction plan. School employees eligible for SEBB benefits as described in WAC 182-31-040 may also elect to participate in the medical FSA, limited purpose FSA, or DCAP programs provided they elect participation within the time frames described in WAC 182-30-100.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-060, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-060, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-115, filed 6/21/21, effective 1/1/22)

**WAC 182-31-080 When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment?** A school employee may waive enrollment in school employees benefits board (SEBB) medical only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. A school employee who waives enrollment in SEBB medical must enroll in SEBB dental, SEBB vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, and employer-paid long-term disability (LTD) insurance. A school employee will also be enrolled in employee-paid LTD insurance automatically unless the school employee declines their employee-paid LTD insurance as described in WAC 182-30-080.

Exception: A school employee may waive their enrollment in SEBB medical to enroll in public employees benefits board (PEBB) medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(1) To waive enrollment in SEBB medical, the school employee must submit the required form to their SEBB organization at one of the following times:

(a) **When the school employee becomes eligible:** A school employee may waive SEBB medical when they become eligible for SEBB benefits. The school employee must indicate their election to waive enrollment in SEBB medical on the required form and submit the form to their SEBB organization. The SEBB organization must receive the form no later than (~~(thirty-one)~~) 31 days after the date the school employee becomes eligible for SEBB benefits (see WAC 182-30-080). SEBB medical will be waived as of the date the school employee becomes eligible for SEBB benefits.

(b) **During the annual open enrollment:** A school employee may waive SEBB medical during the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** A school employee may waive SEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than a school employee gaining initial eligibility or regaining eligibility for SEBB benefits.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than (~~(sixty)~~) 60 days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to their SEBB organization.

SEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, SEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical will be waived the last day of the previous month.

(2) If a school employee waives SEBB medical, the school employee may not enroll dependents in SEBB medical.

(3) Once SEBB medical is waived, the school employee is only allowed to enroll in SEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows a school employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than (~~(sixty)~~) 60 days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to the SEBB organization.

SEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If

that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical for the school employee will begin on the first day of the month in which the event occurs. SEBB medical for the newly born child, newly adopted child, spouse, or state-registered domestic partner will begin as described in WAC 182-31-150 (3) (a) (iv).

If a school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the health care authority will notify the school employee of their removal from the PEBB subscriber's account and that they have experienced a special enrollment event. The school employee will be required to return from waived enrollment and elect SEBB medical, SEBB dental, and SEBB vision. If the school employee's SEBB organization does not receive the school employee's required forms indicating their medical, dental, and vision elections within (~~sixty~~) 60 days of the school employee losing PEBB medical and PEBB dental, they will be defaulted into employee-only SEBB medical, SEBB dental, and SEBB vision as described in WAC 182-30-080 (1) (b) (i) through (iii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the school employee to enroll in SEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the school employee, the school employee's dependent, or both.

(a) School employee acquires a new dependent due to:

- (i) Marriage or registering a state registered domestic partnership;
- (ii) Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- (iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The school employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group medical;

Note: As used in (d) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) School employee or a school employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;

(f) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that

change in residence results in the dependent losing their health insurance;

(g) A court order requires the school employee or any other individual to provide a health plan for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

Note: A school employee may only return from having waived SEBB medical for the events described in (h) of this subsection. A school employee may not waive their SEBB medical for the events described in (h) of this subsection.

(i) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) School employee or a school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) School employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09, 2021-11. WSR 21-13-115 (Admin #2021-01.02), § 182-31-080, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-080, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-080, filed 7/1/19, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

**WAC 182-31-090 When is an enrollee eligible to continue school employees benefits board (SEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)?** (1) A school employee or a school employee's dependent who loses eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and who qualifies for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue coverage for all or any combination of SEBB medical, dental, or vision.

(2) A school employee or a school employee's dependent who loses eligibility for continuation coverage described in WAC 182-31-100(~~(, 182-31-110,)~~) or 182-31-120 but who has not used the maximum number of months allowed under COBRA may continue any combination of SEBB medical, dental, or vision for the remaining difference in months.

(3) An enrollee may continue SEBB medical, dental, or vision under COBRA by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

(a) The election must be received by the SEBB program no later than (~~sixty~~) 60 days from the date the enrollee's SEBB health plan coverage ended or from the postmark date on the election notice sent by the SEBB program, whichever is later;



(b) The first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than (~~forty-five~~) 45 days after the election period ends as described in (a) of this subsection. Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-30-040 (1)(c);

(c) COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility as described in WAC 182-31-040. Those who request to terminate their COBRA coverage must do so in writing. COBRA coverage will end on the last day of the month in which the SEBB program receives the termination request or on the last day of the month specified in the COBRA enrollee's termination request, whichever is later. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month;

(d) A school employee enrolled in a medical flexible spending arrangement (FSA) or limited purpose FSA and the school employee's dependents will have an opportunity to continue making contributions to their medical FSA or limited purpose FSA by electing COBRA if on the date of the qualifying event, as described under 42 U.S.C. Sec. 300bb-3, the school employee's medical FSA or limited purpose FSA has a greater amount in remaining benefits than remaining contribution payments for the current year. The election must be received by the contracted vendor no later than (~~sixty~~) 60 days from the date the SEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later. The first premium payment under COBRA coverage is due to the contracted vendor no later than (~~forty-five~~) 45 days after the election period ends as described above.

(4) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue SEBB medical, dental, or vision on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

(5) Medical, dental, and vision coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for SEBB health plan coverage as described in WAC 182-31-050, 182-31-100, 182-31-120, or 182-31-140.

(6) An enrollee's COBRA coverage will terminate at the end of the month when they become eligible for medicare due to turning age (~~sixty-five~~) 65 or older, or when enrolled in medicare due to a disability.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-31-090, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-090, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-090, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-090, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

**WAC 182-31-150 When may subscribers enroll or remove eligible dependents?** (1) **Enrolling dependents in school employees benefits board (SEBB) health plan coverage (~~and the effective date of~~), supplemental dependent life insurance, and accidental death and dismemberment (AD&D) insurance.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled in health plan coverage to enroll their dependent in health plan coverage. A dependent with more than one source of eligibility for enrollment in the public employees benefits board (PEBB) and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. Subscribers must satisfy the enrollment requirements as described in subsection (4) of this section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in SEBB benefits. If eligibility is verified the dependent's effective date will be as follows:

(i) SEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life insurance or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least (~~fourteen~~) 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) **During the annual open enrollment.** SEBB health plan coverage begins January 1st of the following year;

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section;

(d) **When a National Medical Support Notice (NMSN)** requires a subscriber to cover a dependent child in health plan coverage as described in WAC 182-31-160; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance. Supplemental dependent life insurance or AD&D insurance will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(2) **Removing dependents from SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.**

(a) **A dependent's eligibility for enrollment in SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-31-140. Subscribers must provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of dependent ceasing to be eligible as a dependent child as described in WAC 182-31-140(3). For supplemental dependent life insurance or AD&D insurance, subscribers must notify the contracted vendor on the required form, in writing, or by telephone when a dependent is no longer eligible. Contact information for

the contracted vendor may be found at [hca.wa.gov/sebb-employee-contact-plan](http://hca.wa.gov/sebb-employee-contact-plan). For SEBB health plan coverage, the notice must be received within ~~((sixty))~~ 60 days of the last day of the month the dependent loses eligibility ~~((for SEBB health plan coverage))~~. School employees must notify their SEBB organization when a dependent is no longer eligible for SEBB health plan coverage, except as required under WAC 182-31-140 (3)(f)(ii). All other subscribers must notify the SEBB program. Consequences for not submitting notice within the required ~~((sixty))~~ 60 days include, but are not limited to:

(i) The dependent may lose eligibility to continue SEBB medical, dental, or vision under one of the continuation coverage options described in WAC 182-31-130;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility as described in WAC 182-31-130;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

**(b) School employees have the opportunity to remove eligible dependents:**

(i) During the annual open enrollment. The dependent will be removed from SEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in SEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-31-160(2); or

(iv) Any time during the calendar year from supplemental dependent life insurance or AD&D insurance by submitting ~~((the required form))~~ a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at [hca.wa.gov/sebb-employee-contact-plan](http://hca.wa.gov/sebb-employee-contact-plan).

**(c) Enrollees with SEBB continuation coverage as described in WAC 182-31-090 and 182-31-100 may remove dependents** from their SEBB health plan coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the SEBB program. The dependent will be removed from the subscriber's SEBB health plan coverage prospectively. SEBB health plan coverage will end on the last day of the month in which the written notice is received by the SEBB program or on the last day of the month specified in the subscriber's written notice, whichever is later. If the written notice is received on the first day of the month, SEBB health plan coverage will end on the last day of the previous month. SEBB continuation coverage enrollees may remove dependents from supplemental dependent life insurance or AD&D insurance any time during the calendar year by submitting ~~((the required form))~~ a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at [hca.wa.gov/sebb-employee-contact-plan](http://hca.wa.gov/sebb-employee-contact-plan).

**(3) Special open enrollment.**

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury regulations, and correspond to and be

consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

(i) SEBB health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) SEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's SEBB health plan coverage the last day of the month following the later of the event date or the date the required form and proof of the event is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, SEBB health plan coverage will begin or end as follows:

- For the newly born child, SEBB health plan coverage will begin the date of birth;
- For a newly adopted child, SEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;
- For a spouse or state registered domestic partner of a subscriber, SEBB health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from SEBB health plan coverage the last day of the month in which the event occurred.

(v) Supplemental dependent life insurance or AD&D insurance will begin the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) The events described in this subsection (3)(b)(i) of this section create a special open enrollment to enroll eligible dependents in supplemental dependent life insurance or AD&D insurance. Any one of the following events may create a special open enrollment to enroll or remove eligible dependents from SEBB health plan coverage:

- (i) Subscriber acquires a new dependent due to:
- Marriage or registering a state registered domestic partnership;
  - Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
  - A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (iv) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(v) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;

(vi) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence results in the dependent losing their health insurance;

(vii) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(viii) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

**(4) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection.** For SEBB health plan coverage, a school employee must submit the required forms to their SEBB organization, a subscriber on continuation coverage must submit the required forms to the SEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the required time frames. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

Note: When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the SEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance when the subscriber becomes eligible to enroll in SEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the required time frame as described in WAC 182-30-060 and 182-30-080.

(b) If a subscriber wants to enroll eligible dependents in SEBB health plan coverage during the SEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than ((~~sixty~~)) 60 days after the dependent becomes eligible. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. A school employee may enroll a dependent in supplemental dependent life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted

vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption in SEBB health plan coverage, the subscriber should notify the SEBB program by submitting the required forms as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required forms must be received no later than ~~((sixty))~~ 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval no later than 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. A newly born child must be at least ~~((fourteen))~~ 14 days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age ~~((twenty-six))~~ 26 or older as a child with a disability in SEBB health plan coverage, the required forms must be received no later than ~~((sixty))~~ 60 days after the child reaches age ~~((twenty-six))~~ 26 or within the relevant time frame described in (a), (b), and (f) of this subsection. To recertify an enrolled child with a disability, the required forms must be received by the SEBB program or the contracted vendor by the child's scheduled SEBB health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in SEBB health plan coverage during a special open enrollment, the required forms must be received no later than ~~((sixty))~~ 60 days after the event that creates the special open enrollment.

(g) A school employee may enroll a dependent in supplemental dependent life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-31-150, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-150, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-150, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-150, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-31-190 School employees benefits board (SEBB) wellness incentive program eligibility and procedural requirements.** The board annually determines the design of the SEBB wellness incentive program.

(1) All subscribers are eligible to participate in the SEBB wellness incentive program.

(2) Effective January 1, 2020, to receive the SEBB wellness incentive of a reduction to the subscriber's medical plan deductible or a deposit to the subscriber's health savings account for the following plan year, eligible subscribers must complete SEBB wellness incentive program requirements during the current plan year by the following deadline:

(a) For subscribers continuing enrollment in SEBB medical and subscribers enrolling in SEBB medical with an effective date in January through September, the deadline is November 30th; or

(b) For subscribers enrolling in SEBB medical with an effective date in October through December, the deadline is December 31st.

(3) Subscribers who do not complete the requirements according to subsection (2) of this section within the time frame described are not eligible to receive a SEBB wellness incentive the following plan year.

Note: All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The contracted vendor will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

(4) A SEBB wellness incentive will be provided only if:

(a) For the wellness incentive described in subsection (2) of this section the subscriber is still eligible (~~for~~) to participate in the SEBB wellness incentive program, and is enrolled in a SEBB medical plan in the year the incentive applies;

(b) The funding rate provided by the legislature is designed to provide a SEBB wellness incentive program or a SEBB wellness incentive, or both; or

(c) Specific appropriations are provided for wellness incentives.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-190, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-190, filed 7/1/19, effective 8/1/19.]

## OTS-3742.2

AMENDATORY SECTION (Amending WSR 21-13-115, filed 6/21/21, effective 1/1/22)

**WAC 182-31-070 Is dual enrollment in school employees benefits board (SEBB) and public employees benefits board (PEBB) prohibited?** School employees benefits board (SEBB) medical, dental, and vision coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the SEBB program or public employees

benefits board (PEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in SEBB medical, SEBB dental, and SEBB vision coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible school employee may waive SEBB medical and enroll as a dependent under the SEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-31-080.

(3) A dependent enrolled in SEBB medical, SEBB dental, or SEBB vision who becomes eligible for SEBB benefits as a school employee must elect to enroll in SEBB benefits as described in WAC 182-30-080(1). This includes making an election to enroll in or waive enrollment in SEBB medical as described in WAC 182-31-080 (1)(a).

(a) If the school employee does not waive enrollment in SEBB medical, the school employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent. If the school employee's spouse, state registered domestic partner, or parent does not take action to remove the school employee (who is enrolled as a dependent) from their subscriber account, the SEBB program will automatically disenroll the school employee's enrollment as a dependent the last day of the month before the school employee's enrollment in SEBB benefits begins as described in WAC 182-31-040.

Exception: An enrolled dependent who becomes newly eligible, at the start of the school year, for SEBB benefits as a school employee could be dual-enrolled in SEBB medical, dental, and vision for one month. This exception is only allowed for the first month the dependent is enrolled as a school employee.

(b) If the school employee elects to waive their enrollment in SEBB medical, the school employee will remain enrolled in SEBB medical under their spouse's, state registered domestic partner's, or parent's SEBB medical as a dependent.

(4) A child who is eligible for SEBB medical, SEBB dental, and SEBB vision under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in SEBB medical, a single enrollment in SEBB dental, and a single enrollment in SEBB vision.

(5) When a school employee is eligible for the employer contribution toward SEBB benefits due to employment in more than one SEBB organization the following provisions apply:

(a) When a school employee is eligible for the employer contribution during a school year under WAC 182-31-040 and 182-30-130 the SEBB organization that has determined the school employee eligible under WAC 182-31-040 must make the employer contribution;

(b) If the school employee is eligible for the employer contribution under WAC 182-31-040 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(c) If the school employee is eligible for the employer contribution under WAC 182-30-130 at two different SEBB organizations, the school employee must choose to enroll under only one SEBB organization;

(d) If the school employee loses eligibility under one SEBB organization, they must notify their other SEBB organization no later than (~~sixty~~) 60 days from the date of loss of the first SEBB benefits in order to transfer coverage;

(e) The school employee's elections remain the same when a school employee transfers their enrollment under one SEBB organization to another SEBB organization without a break in SEBB benefits for one month or more, as described in (d) of this subsection.



(6) An individual who has more than one source of eligibility for enrollment in the SEBB and PEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the SEBB or PEBB program. A school employee must elect to enroll in SEBB benefits as described in WAC 182-30-080, waive enrollment as described in WAC 182-31-080, or remove eligible dependents as described in WAC 182-31-150. If the ((individual)) school employee takes no action to resolve the dual enrollment, the SEBB program or the PEBB program will automatically enroll or automatically disenroll the individual as described in (c) through (g) of this subsection.

(a) An eligible school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental as described in WAC 182-31-080. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(b) An employee in the PEBB program who waives PEBB medical and PEBB dental for SEBB medical must be enrolled in SEBB dental and SEBB vision. If ((necessary)) the employee is not already enrolled in SEBB dental and SEBB vision, the SEBB program will automatically enroll the ((individual)) employee in the associated subscriber's SEBB dental and SEBB vision.

(c) If the school employee is enrolled only in SEBB dental and SEBB vision, and is also enrolled in PEBB medical, and no action is taken to resolve their dual enrollment, the school employee will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB dental and SEBB vision in which they are enrolled. If the school employee is not already enrolled in PEBB dental, the PEBB program will automatically enroll them in PEBB dental as described in WAC 182-12-123 (6)(h). The school employee's enrollment in SEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

(d) If the school employee is enrolled in SEBB medical and is also an employee in the PEBB program enrolled in PEBB medical, and the school employee has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken by the school employee to resolve their dual enrollment, they will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB medical, SEBB dental, and SEBB vision. The school employee's enrollment in SEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the school employee ((eligible under both the SEBB program as a school employee and the PEBB program as an employee is not enrolled in any medical,)) is not enrolled in medical under either the PEBB or SEBB program but is enrolled only in PEBB dental, SEBB dental, and SEBB vision, the school employee will remain in SEBB dental and SEBB vision. The PEBB program will automatically disenroll the school employee from PEBB dental.

(e) If the school employee's dependent is enrolled in any SEBB medical, SEBB dental, or SEBB vision plan, and the dependent is also an employee in the PEBB program and enrolled in PEBB medical, and no action is taken by either the school employee or the dependent to resolve the dependent's dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision in which they are enrolled.

(f) If the school employee's dependent is enrolled in both SEBB medical and PEBB medical as a dependent and has been enrolled in PEBB

medical longer than they have been enrolled in SEBB medical, and no action is taken to resolve the dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision if they are enrolled. If the school employee's dependent who is eligible as a dependent in both the SEBB and PEBB programs is not enrolled in any medical but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental) as a dependent, the dependent will remain in SEBB vision and if enrolled, SEBB dental. The PEBB program will automatically disenroll the dependent from PEBB dental.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

(g) If the school employee's dependent, who is also an employee in the PEBB program who the PEBB program automatically disenrolled from PEBB dental, the SEBB program will automatically enroll the school employee's dependent in SEBB vision. The SEBB program will also automatically enroll the school employee's dependent in SEBB dental, if they are not already enrolled.

(h) If the school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the school employee will be required to return from waived enrollment as described in WAC 182-31-080 (3)(b).

(i) If the SEBB program automatically disenrolls an individual from SEBB medical, SEBB dental, or SEBB vision to resolve their dual enrollment as described in (d), (e), or (f) of this subsection, but later determines that the school employee did take action to resolve their dual enrollment within the required timelines, the SEBB program will reinstate coverage retroactive to the first of the month in which the individual was disenrolled.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09, 2021-11. WSR 21-13-115 (Admin #2021-01.02), § 182-31-070, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-070, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-070, filed 7/1/19, effective 8/1/19.]

## OTS-3743.1

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

**WAC 182-32-020 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the SEBB organization, as well as supplemental accidental death and

dismemberment insurance offered to and paid for by school employees for themselves and their dependents.

"Appellant" means a person who requests a brief adjudicative proceeding with the SEBB appeals unit about the action of the SEBB organization, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the school employees benefits board established under provisions of RCW 41.05.740.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494 and in WAC 182-32-2000 through 182-32-2160.

"Business days" means all days except Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of SEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of SEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, a school employees benefits board (SEBB) organization, contracted vendor, or the SEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to SEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-31-140.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Dispositive motion" is a motion made to a presiding officer, ((~~review~~)) reviewing officer, or hearing officer to decide a claim or case in favor of the moving party without further proceedings.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage or government-sponsored programs such as medicare or medicaid.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-31 WAC or WAC 182-30-130, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, ((~~review~~)) reviewing officer, or hearing officer. A document is considered filed when it is received by the authority or its designee. A document may be filed by one or more of the following:

- Personal delivery to the authority at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, Washington 98501;
- First class, registered, or certified mail to the authority to the following mailing address:

Health Care Authority  
Attn: SEBB Appeals Unit  
P.O. Box 45504  
Olympia, WA 98504-5504;

- Fax: 360-763-4709; or
- Submission online through the designated submission portal.

The identified methods are the exclusive methods for a document to be filed, and submission of documents by any other fashion to the authority shall not constitute filing unless agreed to in advance by the authority.

"Final order" means an order that is the final health care authority decision.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through 34.05.476 and WAC 182-32-3000 through 182-32-3200.

"HCA hearing representative" means a person who is authorized to represent the SEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical, vision, dental, or any combination of these coverages, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

- A director-designated HCA employee; or
- When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"Life insurance" means any basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the SEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby school employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premiums is less than (~~ninety-five~~) 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and
- The benefits have an actuarial value of at least (~~ninety-five~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"~~(Review)~~ Reviewing officer or officers" means one or more delegates from the director that consider appeals relating to the administration of SEBB benefits by the SEBB program.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" means:

- All employees of school districts and charter schools established under chapter 28A.710 RCW;
- Represented employees of educational service districts; and
- Effective January 1, 2024, all employees of educational service districts.

"School employees benefits board organization" or "SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefit board.

"SEBB" means the school employees benefits board.

"SEBB benefits" means one or more insurance coverages or other employee benefits administered by the SEBB program within the HCA.

"SEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB program" means the program within the HCA that administers insurance and other benefits for eligible school employees (as described in WAC 182-31-040 or 182-30-130), and eligible dependents (as described in WAC 182-31-140).

"State registered domestic partner," has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the school employee or continuation coverage enrollee who has been determined eligible by the SEBB program or SEBB organizations, is enrolled in SEBB benefits, and is the individual to whom the SEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-32-020, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-020, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-020, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-020, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-058 Service or serve.** (1) When the rules in this chapter or in other school employees benefits board (SEBB) program rules or statutes require a party to serve copies of documents on other parties, a party must send copies of the documents to all other parties or their representatives as described in this chapter. In this section, requirements for service or delivery by a party apply also when service is required by the presiding officer or (~~review~~) reviewing officer or officers, or hearing officer.

(2) Unless otherwise stated in applicable law, documents may be sent only as identified in this chapter to accomplish service. A party may serve someone by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail sent via the United States Postal Service or Washington state consolidated mail services;

(c) Fax;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party must serve all other parties or their representatives whenever the party files a motion, pleading, brief, or other document with the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer's office, or when required by law.

(4) Unless otherwise stated in applicable law, service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States Postal Service;

(c) Mail is properly addressed, and deposited in the Washington state consolidated mail services;

(d) Fax produces proof of transmission;

(e) A parcel is delivered to a commercial delivery service with charges prepaid; or

(f) A parcel is delivered to a legal messenger service with charges prepaid.

(5) A party may prove service by providing any of the following:

(a) A signed affidavit of mailing or certificate of service;

(b) The certified mail receipt signed by the person who received the parcel;

(c) A signed receipt from the person who accepted the commercial delivery service or legal messenger service parcel;

(d) Proof of fax transmission.

(6) Service cannot be made by electronic mail unless mutually agreed to in advance and in writing by the parties.

(7) If the document is a subpoena, follow the compliance procedure as described in WAC 182-32-3130.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-058, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-058, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

**WAC 182-32-064 Applicable rules and laws.** (1) A school employees benefits board (SEBB) organization must apply SEBB program rules adopted in the Washington Administrative Code (WAC) and follow instructions from the authority.

(2) A presiding officer, (~~review~~) reviewing officer or officers, or hearing officer must first apply the applicable SEBB program rules adopted in the WAC. If no SEBB program rule applies, the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-32-130, and court decisions.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-064, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-064, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-066 Burden of proof, standard of proof, and presumptions.** (1) The burden of proof is a party's responsibility to provide evidence regarding disputed facts and persuade the presiding officer, (~~(review)~~) reviewing officer or officers, or hearing officer that a position is correct based on the standard of proof. Unless stated otherwise in rules or law, the appellant has the burden of proof in a brief adjudicative proceeding or formal administrative hearing.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a brief adjudicative proceeding or formal administrative hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and school employees benefits board (SEBB) organizations are presumed to have properly performed their duties and acted as described in the law, unless (~~(substantial)~~) preponderance of the evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-066, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-066, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-066, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

**WAC 182-32-2000 Brief adjudicative proceedings.** Pursuant to RCW 34.05.482, the authority (~~(will)~~) may use brief adjudicative proceedings for issues identified in this chapter when doing so would not violate law, or when protection of the public interest does not require the authority to give notice and an opportunity to participate to persons other than the parties, or the issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.476 which govern formal administrative hearings.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2000, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2000, filed 12/14/18, effective 1/14/19.]



AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

**WAC 182-32-2005 Record—Brief adjudicative proceeding.** The record in a brief adjudicative proceeding consists of any documents regarding the matter, considered or prepared by the presiding officer for the brief adjudicative proceeding or by the ~~((review))~~ reviewing officer or officers for any review. The authority's record does not have to constitute the exclusive basis for agency action, unless otherwise required by law.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2005, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-2050 How can a school employee appeal a decision regarding the administration of benefits offered under the salary reduction plan?** (1) Any school employee who disagrees with a decision that denies eligibility for, or enrollment in, a benefit offered under the salary reduction plan may appeal that decision by submitting a written request for administrative review to their school employees benefits board (SEBB) organization. The SEBB organization must receive the written request for administrative review no later than ~~((thirty))~~ 30 days after the date of the decision resulting in denial. The contents of the written request for administrative review are to be provided as described in WAC 182-32-2070.

(a) Upon receiving the written request for administrative review, the SEBB organization must perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The SEBB organization must render a written decision within ~~((thirty))~~ 30 days of receiving the written request for administrative review. The written decision must be sent to the school employee who submitted the written request for review and must include a description of appeal rights. The SEBB organization must also send a copy of the SEBB organization's written decision to the SEBB organization's administrator (or designee) and to the SEBB appeals unit. If the SEBB organization fails to render a written decision within ~~((thirty))~~ 30 days of receiving the written request for administrative review, the request for administrative review may be considered denied as of the ~~((thirty-first))~~ 31st day and the original underlying SEBB organization decision may be appealed to the SEBB appeals unit by following the process in this section.

(2) Any school employee who disagrees with the SEBB organization's decision in response to a written request for administrative review, as described in this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the SEBB appeals unit.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than ~~((thirty))~~ 30 days after the date of the SEBB organization's written decision on the request for

administrative review. If a SEBB organization fails to render a written decision within (~~(thirty)~~) 30 days of receiving a written request for administrative review, the SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than (~~(thirty)~~) 30 days after the date the request for administrative review was deemed denied. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the SEBB appeals unit receives a request for a brief adjudicative proceeding, the SEBB appeals unit will send a request for documentation and information to the applicable SEBB organization. The SEBB organization will then have two business days to respond to the request and provide the documentation and information requested. The SEBB organization will also send a copy of the documentation and information to the school employee.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding, the SEBB organization's prior written decision becomes the authority's final order without further action.

(3) Any school employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement or limited purpose flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may appeal that decision to the authority's contracted vendor by following the appeal process of that contracted vendor.

(a) Any school employee who disagrees with a decision in response to an appeal filed with the contracted vendor that administers the medical FSA, limited purpose FSA, and DCAP under the salary reduction plan may request a brief adjudicative proceeding by submitting a written request to the SEBB appeals unit. The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than (~~(thirty)~~) 30 days after the date of the contracted vendor's appeal decision. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-32-2070.

(i) The SEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding, the contracted vendor's prior written decision becomes the authority's final order without further action.

(4) Any school employee aggrieved by a decision regarding the administration of the premium payment plan offered under the salary reduction plan may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the SEBB appeals unit for a brief adjudicative proceeding.

(a) The SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than (~~(thirty)~~) 30 days after the date of the denial notice by the SEBB program. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The SEBB appeals unit must notify the appellant in writing when the notice of appeal has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If a school employee fails to timely request a brief adjudicative proceeding, the SEBB program's prior written decision becomes the authority's final order without further action.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2050, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2050, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2050, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

**WAC 182-32-2080 Who can appeal or represent a party in a brief adjudicative proceeding?** (1) The appellant may act as their own representative or may choose to be represented by another person, except that employees of the health care authority (HCA) or HCA's authorized agents may not represent an appellant, unless approved by a presiding officer or (~~review~~) reviewing officer.

(2) If the appellant is represented by a person who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the nonattorney representative must provide the school employees benefits board (SEBB) appeals unit and other parties with a signed, written consent permitting release to the nonattorney representative of the appellant's health information protected by state or federal law.

(3) An attorney admitted to practice law in Washington state representing the appellant must file a written notice of appearance containing the attorney's name, address, and telephone number with the presiding officer's office and serve all parties with the notice. In cases involving confidential information, the attorney must provide the SEBB appeals unit and other parties with a signed, written consent permitting release to the attorney of the appellant's health information protected by state or federal law. If the appellant's attorney representative no longer represents the appellant, then the attorney must file a written notice of withdrawal of representation with the presiding officer or (~~review~~) reviewing officer or officer's office and serve all parties with the notice.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2080, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2080, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-2085 Continuances.** The presiding officer, (~~review~~) reviewing officer or officers may grant, in their sole discretion, a request for a continuance on motion of the appellant, the authority, or on their own. The continuance may be up to (~~thirty~~) 30 calendar days.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2085, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2085, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2085, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding.** (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding a school employees benefits board (SEBB) organization decision, SEBB program decision, or a decision made by a SEBB program contracted vendor, may request review of the initial order by the authority. The appellant (~~must file~~) may request review of the initial order by filing a written request (~~for review of the initial order or make an oral request for review of the initial order~~) or making an oral request with the SEBB appeals unit within (~~twenty-one~~) 21 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If the appellant fails to request review of the initial order within (~~twenty-one~~) 21 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more (~~review~~) reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review, the authority may review an order resulting from a brief adjudicative proceeding on its own, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giving that party notice and an opportunity to explain that party's view of the matter.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2100, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2100, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2100, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

**WAC 182-32-2105 Withdrawing the request for a brief adjudicative proceeding or review of an initial order.** (1) The appellant may withdraw the request for a brief adjudicative proceeding or review of an initial order for any reason, and at any time, by contacting the school employees benefits board (SEBB) appeals unit. The SEBB appeals unit will present the withdrawal request to the presiding officer or ((~~review~~)) reviewing officer or officers.

(2) The request for withdrawal must be made in writing.

(3) After a withdrawal request is received, the presiding officer or ((~~review~~)) reviewing officer or officers must enter and serve a written order dismissing the brief adjudicative proceeding or review of an initial order.

(4) If an appellant withdraws a request for a brief adjudicative proceeding or review of an initial order, the appellant may not reinstate the request for a brief adjudicative proceeding or review of an initial order unless time remains on their original appeal period.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2105, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2105, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-2110 Final order.** (1) A final order issued by the ((~~review~~)) reviewing officer or officers will be in writing and include a brief statement of the reasons for the decision.

(2) The final order must be served within ((~~twenty~~)) 20 days of the date of the initial order or of the date the request for review of the initial order was received by the SEBB appeals unit, whichever is later.

(3) The final order will include a notice that reconsideration and judicial review may be available.

(4) A request for review of the initial order is deemed denied if the authority does not issue a final order within ((~~twenty~~)) 20 days after the request for review of the initial order is filed.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2110, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2110, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-2120 Request for reconsideration.** (1) A request for reconsideration asks the (~~review~~) reviewing officer or officers to reconsider the final order because the party believes the (~~review~~) reviewing officer or officers made a mistake of law, mistake of fact, or clerical error.

(2) A request for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) Requests for reconsideration must be filed with the (~~review~~) reviewing officer or officers who entered the final order.

(4) If a party files a request for reconsideration:

(a) The (~~review~~) reviewing officer or officers must receive the request for reconsideration on or before the tenth business day after the service date of the final order;

(b) The party filing the request must send copies of the request to all other parties; and

(c) Within five business days of receiving a request for reconsideration, the (~~review~~) reviewing officer or officers must serve to all parties a notice that provides the date the request for reconsideration was received.

(5) The other parties may respond to the request for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(a) Responses to a request for reconsideration must be received by the (~~review~~) reviewing officer or officers no later than seven business days after the service date of the (~~review~~) reviewing officer or officers' notice as described in subsection (4)(c) of this section, or the response will not be considered.

(b) Service of responses to a request for reconsideration must be made to all parties.

(6) If a party needs more time to file a request for reconsideration or respond to a request for reconsideration, the (~~review~~) reviewing officer or officers may extend the required time frame if the party makes a written request providing a good reason for the request within the required time frame.

(7) Unless the request for reconsideration is denied as untimely filed under subsection (4)(a) of this section, the same (~~review~~) reviewing officer or officers who entered the final order, if reasonably available, will also consider the request as well as any responses received.

(8) The decision on the request for reconsideration must be in the form of a written order denying the request, granting the request in whole or in part and issuing a new written final order, or granting the request and setting the matter for further hearing.

(9) If the (~~review~~) reviewing officer or officers do not send an order on the request for reconsideration within (~~twenty~~) 20 calendar days of the date of the notice described in subsection (4)(c) of this section, the request is deemed denied.

(10) If any party files a request for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a request for reconsideration is not required before requesting judicial review.

(11) An order denying a request for reconsideration is not subject to judicial review.

(12) No evidence may be offered in support of a motion for reconsideration, except newly discovered evidence that is material for the party moving for reconsideration and that the party could not with reasonable diligence have discovered and produced prior to the final order being issued.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2120, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2120, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2120, filed 12/14/18, effective 1/14/19.]

#### NEW SECTION

**WAC 182-32-2135 Petitions for judicial review—Service on the authority.** 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 school employees benefits board (SEBB) appeals unit at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98501 or received by mail at the SEBB appeals unit, P.O. Box 45504, Olympia, WA 98504-5504.

[ ]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-2150 ((Review)) Reviewing officer or officers—Designation and authority.** (1) The designation of a ((~~review~~)) reviewing officer or officers must be consistent with the requirements of RCW 34.05.491 and the ((~~review~~)) reviewing officer or officers must not have personally participated in the decision made by the school employees benefits board (SEBB) organization or SEBB program.

(2) The ((~~review~~)) reviewing officer or officers must review the initial order and the record to determine if the initial order was correctly decided and make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing.

(3) The ((~~review~~)) reviewing officer or officers will issue a final order that will either:

- (a) Affirm the initial order in whole or in part; or
- (b) Reverse the initial order in whole or in part; or
- (c) ~~((Convert the matter to a formal administrative hearing; or~~
- ~~(d))~~ Remand to the presiding officer in whole or in part.

(4) A ((~~review~~)) reviewing officer or officers are limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(5) A ((~~review~~)) reviewing officer or officers may not decide that a rule is invalid or unenforceable.

(6) In addition to the record, the ~~((review))~~ reviewing officer or officers may employ the authority's expertise as a basis for the decision.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2150, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2150, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2150, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing.** (1) The presiding officer or the ~~((review))~~ reviewing officer or officers, in their sole discretion, may convert a brief adjudicative proceeding to a formal administrative hearing at any time before the final order is issued on motion by ~~((the subscriber or enrollee or their representative, the authority, or on))~~ :

(a) The appellant;

(b) The representative of the appellant;

(c) The authority; or

(d) The presiding officer or ~~((review))~~ reviewing officer or ~~((officers' own))~~ officers.

(2) The presiding officer or ~~((review))~~ reviewing officer or officers must convert the brief adjudicative proceeding to a formal administrative hearing when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the authority to give notice and an opportunity to participate to persons other than the parties, or when the issues and interests involved in the controversy warrant the use of the procedures of RCW 34.05.413 through 34.05.476 that govern formal administrative hearings.

(3) When a brief adjudicative proceeding is converted to a formal administrative hearing, the director designates a hearing officer to conduct the formal administrative hearing upon notice to the ~~((subscriber or enrollee))~~ appellant and the authority.

(4) When a brief adjudicative proceeding is converted to a formal administrative hearing, WAC 182-32-010 through 182-32-130 and WAC 182-32-3000 through 182-32-3200 apply to the formal administrative hearing.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2160, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2160, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2160, filed 12/14/18, effective 1/14/19.]



AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

**WAC 182-32-3170 Office of administrative hearings—Initial or final order ((deadline))—Required information.** (1) ~~((Within ninety days after the formal administrative hearing record is closed, the hearing officer must serve a copy of the final order to all parties. (2))~~ **Initial order:** When the office of administrative hearings is holding a formal administrative hearing on behalf of the authority, the hearing officer must render a written initial order that addresses the issue or issues raised by the appellant in their appeal. The hearing officer must serve a copy of the initial order on all parties and the initial order must contain information on how the appellant may request review of the initial order.

(2) Final order: The final order will only be issued by the authority. After the reviewing officer or officers receives a request for review, the reviewing officer or officers has 20 calendar days to enter and serve a final order to all parties unless the reviewing officer serves notice allowing more time.

(3) In the written final order, the hearing officer must:

- (a) Identify the order as a final order of the school employees benefits board (SEBB) program;
- (b) List the name and docket number of the case and the names of all parties and representatives;
- (c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;
- (d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;
- (e) State the law that applies to the dispute;
- (f) Apply the law to the facts of the case in the conclusions of law;
- (g) Discuss the reasons for the decision based on the facts and the law;
- (h) State the result and remedy ordered; and
- (i) Include any other information required by law or program rules.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-3170, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3170, filed 12/14/18, effective 1/14/19.]

NEW SECTION

**WAC 182-32-3175 How to request a review of an initial order by the office of administrative hearings.** (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding a school employees benefits board (SEBB) organization decision, a SEBB program decision, or a decision made by a SEBB program contracted vendor, may request review of the initial order by filing a written request or making an oral request with the SEBB appeals unit within 20 days after service of the initial order. The written or oral request for review of the initial order

must be made by using the contact information included in the initial order. If such review is requested, the hearing officer or their designee from the authority, shall issue a final order in accordance with WAC 182-32-3030. If the appellant fails to request review of the initial order within 20 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review of the initial order, the authority may review an initial order issued by the office of administrative hearings on its own, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giving that party notice and an opportunity to explain that party's view of the matter.

[]

#### NEW SECTION

**WAC 182-32-3210 Petitions for judicial review—Service on the authority.** 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 school employees benefits board (SEBB) appeals unit at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98501 or received by mail at the SEBB appeals unit, P.O. Box 45504, Olympia, WA 98504-5504.

[]

## WSR 22-10-080

## PROPOSED RULES

## HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2022-02—Filed May 3, 2022, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-096.

Title of Rule and Other Identifying Information: WAC 182-30-080  
When must a newly eligible school employee, or a school employee who regains eligibility for the employer contribution, elect school employees benefits board (SEBB) benefits and complete required forms?

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (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. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_\\_edPzYSMR9CMXCEzVIvWw](https://us02web.zoom.us/webinar/register/WN__edPzYSMR9CMXCEzVIvWw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 8, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1305, fax 360-586-9727, telecommunication[s] relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement a policy resolution to support the school employees benefits board (SEBB) program:

Amended WAC 182-30-080 to implement Policy Resolution SEBB 2022-01 School employees returning to work from active duty.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Policy Resolution SEBB 2022-01.

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: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

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

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

May 3, 2022  
Wendy Barcus  
Rules Coordinator

## OTS-3740.1

AMENDATORY SECTION (Amending WSR 21-13-116, filed 6/21/21, effective 1/1/22)

**WAC 182-30-080 When must a newly eligible school employee, or a school employee who regains eligibility for the employer contribution, elect school employees benefits board (SEBB) benefits and complete required forms?** A school employee who is newly eligible or who regains eligibility for the employer contribution toward school employees benefits board (SEBB) benefits enrolls as described in this section.

(1) When a school employee is newly eligible for SEBB benefits:

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment provided the school employee is eligible to waive as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization or contracted vendor. Their SEBB organization or contracted vendor must receive the forms no later than (~~thirty-one~~) 31 days after the school employee becomes eligible for SEBB benefits under WAC 182-31-040.

(i) The school employee may enroll in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the school employee's SEBB organization or contracted vendor as required. A school employee may apply for enrollment in supplemental life insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For a school employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. A school employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at anytime without evidence of insurability by submitting the required form to the contracted vendor.

(ii) School employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. A school employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their SEBB organization. A school employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their SEBB organization or the contracted vendor. For a school employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the SEBB organization receives the required form requesting to reduce or de-

cline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If the school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee will automatically enroll in the premium payment plan upon enrollment in SEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new school employee must complete the required form and return it to their SEBB organization. The form must be received by their SEBB organization no later than ~~((thirty-one))~~ 31 days after the employee becomes eligible for SEBB benefits.

(iv) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the state's medical flexible spending arrangement (FSA) ~~((or)),~~ limited purpose FSA, dependent care assistance program (DCAP), or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to their SEBB organization. The form must be received by the SEBB organization no later than ~~((thirty-one))~~ 31 days after the school employee becomes eligible for SEBB benefits.

(b) If a newly eligible school employee's SEBB organization, or the authority's contracted vendor in the case of life insurance and AD&D, does not receive the school employee's required forms indicating medical, dental, vision, life insurance, AD&D insurance, and LTD insurance elections, and the school employee's tobacco use status attestation within ~~((thirty-one))~~ 31 days of the school employee becoming eligible, their enrollment will be as follows for those elections not received within ~~((thirty-one))~~ 31 days:

- (i) A medical plan determined by the health care authority (HCA);
- (ii) A dental plan determined by the HCA;
- (iii) A vision plan determined by the HCA;
- (iv) Basic life insurance;
- (v) Basic AD&D insurance;
- (vi) Employer-paid LTD insurance and employee-paid LTD insurance;
- (vii) Dependents will not be enrolled; and
- (viii) A tobacco use premium surcharge will be incurred as described in WAC 182-30-050 (1)(b).

(2) The employer contribution toward SEBB benefits ends according to WAC 182-31-050. When a school employee's employment ends, participation in the salary reduction plan ends.

(3) When a school employee regains eligibility for the employer contribution toward SEBB benefits, including following a period of leave as described in WAC 182-31-100(1) or 182-31-040 (4)(d), SEBB medical, dental, and vision begin the first day of the month following the school employee's return to work if the SEBB organization anticipates the school employee is eligible for the employer contribution.

Note: When a school employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward SEBB benefits, they regain eligibility for the employer contribution toward SEBB benefits the day they return from active duty. Employer-paid SEBB benefits will begin the first day of the month in which they return from active duty.

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment if the school employee chooses to waive enrollment as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization except as described in (d) of this subsection. Forms must be received by the SEBB organization, life insurance con-

tracted vendor, or AD&D contracted vendor, if required, no later than ~~((thirty-one))~~ 31 days after the school employee regains eligibility except as described in (a) (i) and (b) of this subsection:

(i) A school employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) A school employee who was eligible to continue supplemental life insurance but discontinued that supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution.

(b) A school employee does not have to return a form indicating employee-paid LTD insurance elections. Their employee-paid LTD insurance will be automatically reinstated effective the first day of the month following the date they regain eligibility for the employer contribution toward SEBB benefits.

(c) If a school employee's SEBB organization, or contracted vendor accepting forms directly, does not receive the required forms within ~~((thirty-one))~~ 31 days of the school employee regaining eligibility, the school employee's enrollment for those elections not received will be as described in subsection (1) (b) (i) through (viii) of this section, except as described in (a) (i) and (b) of this subsection.

(d) If a school employee is eligible to participate in the salary reduction plan (see WAC 182-31-060), the school employee may enroll in the medical FSA ~~((or))~~, limited purpose FSA, DCAP, or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to the contracted vendor or their SEBB organization. The contracted vendor or school employee's SEBB organization must receive the form no later than ~~((thirty-one))~~ 31 days after the school employee becomes eligible for SEBB benefits.

(4) If a school employee who is eligible to participate in the salary reduction plan (see WAC 182-31-060) is hired into a new position that is anticipated to be eligible for SEBB benefits in the same year, the school employee may not resume participation in a DCAP ~~((or))~~, a medical FSA, or a limited purpose FSA until the beginning of the next plan year, unless the time between employments is ~~((thirty))~~ 30 days or less and within the current plan year. The school employee must notify the new SEBB organization of the transfer by providing the new SEBB organization the required form no later than ~~((thirty-one))~~ 31 days after the school employee's first day of work with the new SEBB organization.

(5) A school employee will have uninterrupted coverage when moving from one SEBB organization to another within the same month or a consecutive month if they are eligible for the employer contribution towards SEBB benefits in the position they are leaving and are anticipated to be eligible for the employer contribution in the new position. SEBB benefits elections also remain the same when a school employee has a break in employment that does not interrupt their employer contribution toward SEBB benefits.

(6) A school employee returning to the same SEBB organization who is anticipated to work at least ~~((six-hundred-thirty))~~ 630 hours in the coming school year, and who was receiving the employer contribution in August of the prior school year, will receive uninterrupted coverage from one school year to the next.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-11 and 2021-12. WSR 21-13-116 (Admin #2021-01.03), § 182-30-080, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-080, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-080, filed 7/1/19, effective 8/1/19.]

## WSR 22-10-081

## PROPOSED RULES

## HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2022-01—Filed May 3, 2022, 2:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-098.

Title of Rule and Other Identifying Information: **The following sections in chapter 182-08 WAC are revised:** WAC 182-08-015 Definitions, 182-08-180 Premium payments and premium refunds, 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment?, 182-08-198 When may a subscriber change health plans?, 182-08-199 When may an employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible arrangement (FSA), or dependent care assistance program (DCAP)?, and 182-08-235 Employer group and board of directors for school districts and educational service districts application process.

**The following sections in chapter 182-12 WAC are revised:** WAC 182-12-109 Definitions, 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits?, 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may they enroll in PEBB medical after having waived enrollment?, 182-12-146 When is an enrollee eligible to continue public employees benefits board (PEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)?, 182-12-262 When may subscribers enroll or remove eligible dependents?, 182-12-263 National Medical Support Notice (NMSN), and 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements.

**The following sections in chapter 182-16 WAC are revised or new:** WAC 182-16-020 Definitions, 182-16-058 Service or serve, 182-16-064 Applicable rules and laws, 182-16-066 Burden of proof, standard of proof, and presumptions, 182-16-2000 Brief adjudicative proceedings, 182-16-2005 Record—Brief adjudicative proceeding, 182-16-2050 How can an employee appeal a decision regarding the administration of benefits offered under the salary reduction plan?, 182-16-2080 Who can appeal or represent a party in a brief adjudicative proceeding?, 182-16-2085 Continuances, 182-16-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding, 182-16-2105 Withdrawing the request for a brief adjudicative proceeding or review of an initial order, 182-16-2110 Final order, 182-16-2120 Request for reconsideration, 182-16-2135 Petitions for judicial review—Service on the authority (new section), 182-16-2150 Review officer or officers—Designation and authority, 182-16-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing, 182-16-3170 Final order deadline—Required information, 182-16-3175 How to request a review of an initial order by the office of administrative hearings (new section), and 182-16-3210 Petitions for judicial review—Service on the authority (new section).

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (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: Register in ad-



vance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_edPzYSMR9CMXCEzVivwWw](https://us02web.zoom.us/webinar/register/WN_edPzYSMR9CMXCEzVivwWw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 8, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1305, fax 360-586-9727, telecommunication[s] relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend some of the existing rules and to create new rules to support the PEBB program:

**1. Make technical amendments:**

- Amended WAC 182-08-187, 182-08-199, 182-12-146, and 182-16-2050 to implement limited purpose FSA.
- Amended WAC 182-08-187 to clarify when an enrollment error is being corrected, PEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified,
- Amended WAC 182-08-198 to clarify that a subscriber or their dependent may change medical plans when they are no longer enrolled in a health savings account.
- Amended WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262 to clarify a special open enrollment related to a subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility.
- Amended WAC 182-08-199 to include employees cannot enroll in a medical FSA or limited purpose FSA in the same year and which FSA they will be enrolled in and to provide a technical correction when an employee or an employee's dependent has a change in enrollment under an employer-based dependent care assistance program during its annual open enrollment.
- Amended WAC 182-08-235 to move the language describing the statement requirements for educational service districts and board members of school districts or educational service districts to a note.
- Amended WAC 182-12-128 to include an employee may not waive enrollment in PEBB medical if they are enrolled in PEBB retiree insurance coverage.
- Amended WAC 182-12-146 to remove a WAC citation.
- Amended WAC 182-12-262 to clarify a dependent with more than one source of eligibility for enrollment in PEBB and school employees benefits board programs is limited to a single enrollment in medical, dental, and vision plans in either program, to clarify when a national medical support notice requires a subscriber to cover a dependent child in health plan coverage, clarified enrollment and disenrollment requirements for supplemental dependent life insurance or AD&D insurance, and to remove WAC references.
- Amended WAC 182-12-263 to update a WAC citation.
- Amended WAC 182-12-300 to clarify the wellness incentive's eligibility.

- Made global amendments in chapter 182-16 WAC to update the use of reviewing officer or officers.

**2. Amend rules to improve the administration of the PEBB program:**

- Amended WAC 182-08-015 and 182-12-109 to update the definitions of annual open enrollment, life insurance, salary reduction plan, special open enrollment, and to create a new definition of limited purpose flexible spending arrangement or limited purpose FSA.
- Amended WAC 182-08-180 to include an employee who is on a leave of absence and maintains eligibility for the employer contribution will have their premiums waived for their employee-paid long-term disability insurance for the first 90 days.
- Amended WAC 182-12-114 to include an exception for seasonal employees who work a recurring, annual season with a duration of less than nine months are not eligible for the employee-paid LTD benefits.
- Amended WAC 182-12-262 to include a notification requirement for subscribers when a dependent is no longer eligible for supplemental dependent life insurance or AD&D insurance coverage and methods of submitting a request to remove an eligible dependent from supplemental dependent life insurance or AD&D insurance coverage.
- Amended WAC 182-16-020 to update the definitions of life insurance and salary reduction plan, and to create a new definition of limited purpose flexible spending arrangement or limited purpose FSA.
- Amended WAC 182-16-058 to clarify when service is complete.
- Amended WAC 182-16-066 to use preponderance of the evidence instead of substantial evidence when addressing presumptions.
- Amended WAC 182-16-2000 to clarify the authority may use the brief adjudicative proceedings for issues identified in the chapter.
- Amended WAC 182-16-2100 to include both the appellant and the authority may request review of an initial order and the appellant may request review of the initial order by filing a written request or making an oral request with the PEBB appeals unit.
- Created WAC 182-16-2135 to address petitions for judicial review - service on the authority.
- Amended WAC 182-16-2150 to include a reviewing officer or officers must make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing, and to remove the reviewing officer or officers will issue a final order that will convert the matter to a formal administrative hearing.
- Amended WAC 182-16-2160 to clarify the presiding officer or the reviewing officer or officers may convert a brief adjudicative proceeding to a formal administrative hearing at any time before the final order is issued on motion by the appellant and their representative and reviewing officer or officers.
- Amended WAC 182-16-3170 to include required information when the office of administrative hearings is holding a formal administrative hearing on behalf of the authority and to clarify the final order will only be issued by the authority.
- Created WAC 182-16-3175 on how to request a review of an initial order issued by the office of administrative hearings.
- Created WAC 182-16-3210 to address petitions for judicial review - service on the authority.

Reasons Supporting Proposal: See purpose statement.

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, 26 U.S.C. Sec. 125.

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: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

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

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

May 3, 2022  
Wendy Barcus  
Rules Coordinator

## OTS-3745.1

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

**WAC 182-08-015 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP) ((~~o~~)), the medical flexible

spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of PEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or the public employees benefits board's policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13) (a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB insurance coverage by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1) (g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c)

through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, nonrepresented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employer group rate surcharge" means the rate surcharge described in RCW 41.05.050(2).

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or an employer group for employees eligible under WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or (~~ten~~) 10 percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Large claim" means a claim for more than \$25,000 in allowed costs for services in a quarter.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Ongoing large claim" means a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than \$25,000 in the quarter.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than (~~ninety-five~~) 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

- The benefits have an actuarial value of at least (~~ninety-five~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as

institutions of higher education and any unit of state government established by law.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the employee in addition to the coverage provided by the employing agency.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means an eligible employee affirmatively declining enrollment in PEBB medical because the employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-12-128. An employee on approved educational leave who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-08-015, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-08-015, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-015, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-015, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-015, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-015, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-015, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-015, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-015, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-015, filed 10/28/13, effective 1/1/14. Statutory



Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-015, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-015, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-015, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-015, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-015, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-08-015, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-08-015, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-08-015, filed 8/26/04, effective 1/1/05; WSR 03-17-031 (Order 02-07), § 182-08-015, filed 8/14/03, effective 9/14/03. Statutory Authority: Chapter 41.05 RCW. WSR 96-08-042, § 182-08-015, filed 3/29/96, effective 4/29/96.]

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

**WAC 182-08-180 Premium payments and premium refunds.** Public employees benefits board (PEBB) insurance coverage premiums and applicable premium surcharges for all subscribers are due as described in this section, except when an employing agency is correcting its enrollment error as described in WAC 182-08-187 (4) or (5).

(1) **Premium payments.** PEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which PEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of PEBB insurance coverage and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 (1)(a), 182-12-180 (3)(a), 182-12-200 (3)(a) or (b), 182-12-205 (6) or (7), 182-12-211, and 182-12-265; or electing to enroll in continuation coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) or the contracted vendor no later than (~~forty-five~~) 45 days after the election period ends as described within the Washington Administrative Code applicable to the subscriber. Premiums and applicable premium surcharges associated with continuing PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental or long-term disability (LTD) insurance coverage. Any medicare part D late enrollment penalty associated with the medicare advantage-prescription drug plan must be made to the contracted vendor. Premiums associated with life insurance and accidental death and dismemberment (AD&D) insurance coverage must be made to the contracted vendor. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due.

(b) For employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the employing agency or contracted vendor. If an employee elects supplemental coverage or employee-paid LTD insurance, or is enrolled in employee-paid LTD insurance as described in WAC 182-08-197 (1)(a) or (3)(a), or is

enrolled in employee-paid LTD insurance as described in WAC 182-08-197 (1)(b), the employee is responsible for payment of premiums from the month that the supplemental coverage or employee-paid LTD insurance begins.

**Exception:** An employee who is on a leave of absence and maintains eligibility for the employer contribution, will have their premiums waived for their employee-paid LTD insurance for the first 90 days. For this purpose, "leave of absence" is defined as a paid or unpaid temporary or indefinite administrative leave, involuntary leave, sick leave, or insurance continued under the federal Family and Medical Leave Act, or paid family and medical leave program as described in WAC 182-12-138.

(c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the employing agency, subscriber, or a subscriber's legal representative to the HCA or contacted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for (~~(thirty)~~) 30 days will be considered delinquent. A subscriber is allowed a grace period of (~~(thirty)~~) 30 days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium surcharges. If a subscriber's monthly premiums or applicable premium surcharges remain unpaid for (~~(sixty)~~) 60 days from the original due date, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premiums and any applicable premium surcharges were paid. If it is determined by the HCA that payment of the unpaid balance in a lump sum would be considered a hardship, the HCA may develop a reasonable payment plan of up to (~~(twelve)~~) 12 months in duration with the subscriber or the subscriber's legal representative upon request.

**Exception:** For a subscriber enrolled in a medicare advantage or a medicare advantage-prescription drug plan a notice will be sent to them notifying them that they are delinquent on their monthly premiums and that the enrollment will be terminated prospectively to the end of the month after the notice is sent.

(d) Monthly premiums or applicable premium surcharges due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premiums or applicable premium surcharges are received by the HCA or contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for (~~(thirty)~~) 30 days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for (~~(thirty)~~) 30 days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** PEBB insurance coverage premiums and applicable premium surcharges will be refunded using the following methods:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the employing agency any excess premiums and applicable premium surcharges paid during the (~~(sixty)~~) 60 day adjustment period, except as indicated in WAC 182-12-148(5).

(b) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-2010, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within (~~(sixty)~~) 60 days after the event that created a change of premiums, the PEBB director, the PEBB director's designee, or the PEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges which does not exceed (~~(twelve)~~) 12 months of premiums; and

(ii) Approve the enrollment change that was originally requested and which forms the basis for the refund.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example, medicare) the subscriber or beneficiary may be eligible for a refund of premiums and applicable premium surcharges paid during the time they were enrolled under the federal program if approved by the PEBB director or the PEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employing agency, subscriber, or beneficiary.

(e) Employing agency errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employee or beneficiary as described in WAC 182-08-187 (4) and (5).

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-180, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-180, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-180, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-180, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-180, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-180, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-180, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-180, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-180, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-180, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-180, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-180, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-180, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-08-180, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-08-180, filed 8/26/04, effective 1/1/05; WSR 03-17-031 (Order 02-07), § 182-08-180, filed 8/14/03, effective 9/14/03. Statutory Authority: Chapter 41.05 RCW. WSR 96-08-042, § 182-08-180, filed 3/29/96, effective 4/29/96; Order 01-77, § 182-08-180, filed 8/26/77.]

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

**WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment?** (1) An employing agency or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify an employee of their eligibility for public employee benefits board (PEBB) benefits and the employer contribution as described in WAC 182-12-113(2);

(b) Failure to enroll the employee and their dependents in PEBB benefits as elected by the employee, if the elections were timely;

(c) Failure to enroll an employee and their dependents in PEBB benefits as described in WAC 182-08-197 (1)(b);

(d) Failure to accurately reflect an employee's premium surcharge attestation on the employee's account;

(e) Enrolling an employee or their dependent in PEBB insurance coverage when they are not eligible as described in WAC 182-12-114 or 182-12-260 and it is clear there was no fraud or intentional misrepresentation by the employee involved; or

(f) Providing incorrect information regarding PEBB benefits to the employee that they relied upon.

(2) The employing agency or the applicable contracted vendor must enroll the employee and the employee's dependents, as elected, or terminate enrollment in PEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

**(3) Enrollment or termination.**

(a) PEBB medical and dental enrollment is effective ((~~at a minimum~~)) the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life, basic accidental death and dismemberment (AD&D), employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)) enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life, basic AD&D, employer-paid LTD insurance, and employee-paid LTD insurance begin on that date;

(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Supplemental life, supplemental AD&D, and employee-paid LTD insurance is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue employee-paid LTD insurance during the period of leave as described in WAC 182-12-133, employee-paid LTD insurance is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue supplemental life insurance, supplemental AD&D insurance, and employee-paid LTD insurance under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to (~~sixty~~) 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in a medical FSA, limited purpose FSA, or DCAP as elected, the employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's PEBB benefits will be terminated prospectively effective as of the last day of the month.

**(4) Premium payments.**

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD starting the date PEBB benefits begins as described in subsections (3) and (5)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of their eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the employee was notified.

(b) When an employing agency fails to correctly enroll the amount of employee-paid LTD insurance elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent (~~twenty-four~~) 24 months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When a premium refund is due to the employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent (~~twenty-four~~) 24 months of coverage. The employing agency is responsible for additional months of premium refund.

(c) When an employing agency mistakenly enrolls an employee or their dependent as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the employing agency to the employee without rescinding the insurance coverage.

**(5) Recourse.**

(a) Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c) and (d) of this section, the employing agency must work with the employee, and receive approval from the authority, to implement retroactive PEBB benefits within the following parameters:

(i) Retroactive enrollment in a PEBB insurance coverage;

(ii) Reimbursement of claims paid;

- (iii) Reimbursement of amounts paid by the employee or dependent for medical and dental premiums;
  - (iv) Reimbursement of amounts paid by the employee for the premium surcharges;
  - (v) Other legal remedy received or offered; or
  - (vi) Other recourse, upon approval by the authority.
- (b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for PEBB benefits.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-187, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-187, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-187, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-187, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-187, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-187, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-187, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-187, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-187, filed 10/28/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

**WAC 182-08-198 When may a subscriber change health plans?** A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the public employees benefits board (PEBB) annual open enrollment period. A subscriber must submit the required enrollment forms to change their health plan. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than an employee gaining initial eligibility for PEBB benefits as described in WAC 182-12-114 or regaining eligibility for PEBB benefits as described in WAC 182-08-197. The change in enrollment must be allowable under Internal Revenue Code and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To disenroll from a medicare advantage plan or medicare advantage-prescription drug plan, the change in enrollment must be allowable under 42 C.F.R. Secs.

422.62(b) and 423.38(c). To make a health plan change, a subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than (~~sixty~~) 60 days after the event occurs, except as described in (i) of this subsection. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day.

**Exception:** When a subscriber or their dependent is enrolled in a medicare advantage or medicare advantage-prescription drug plan, they may disenroll during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and 423.38(c). The new medical plan coverage will begin the first day of the month following the date the medicare advantage plan disenrollment form is received.

If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or eligibility certification. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

**Note:** A subscriber may not change their health plan if their state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(d) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

**Note:** As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan, otherwise there will be limited accessibility to network providers and covered services;

**Exception:** A dental plan is considered available if a provider is located within (~~fifty~~) 50 miles of the subscriber's new residence.

(f) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the sub-

scriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(i) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or terminates enrollment in a medicare advantage-prescription drug or a Part D plan. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-08-196(2).

(i) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has six months from the date of their or their dependent's enrollment in medicare Part B to enroll in a PEBB medicare supplement plan for which they or their dependent is eligible. The forms must be received by the PEBB program no later than six months after the enrollment in medicare Part B for either the subscriber or the subscriber's dependent;

(ii) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has seven months to enroll in a medicare advantage or medicare advantage-prescription drug plan that begins three months before they or their dependent first enrolled in both medicare Part A and Part B and ends three months after the month of medicare eligibility. A subscriber may also enroll themselves or their dependent in a medicare advantage or medicare advantage-prescription drug plan before their last day of the medicare Part B initial enrollment period. The forms must be received by the PEBB program no later than the last day of the month prior to the month the subscriber or the subscriber's dependent enrolls in the medicare advantage or medicare advantage-prescription drug plan.

(j) Subscriber or a subscriber's dependent's current medical plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(k) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the subscriber or the subscriber's dependent. A subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period;

or



(v) Treatment for a high-risk pregnancy.

(3) If the employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-08-198, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-08-198, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-198, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-198, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-198, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-198, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-198, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-198, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-198, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-198, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-198, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-198, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-198, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-198, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-08-198, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-08-198, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-08-198, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-08-198, filed 7/27/05, effective 8/27/05.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-08-199 When may an employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)?** An employee who is eligible to participate in the salary reduction plan as described in WAC 182-12-116 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114 and enrolling as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form

to their employing agency. An eligible employee may elect to enroll or reenroll in the medical FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their employing agency or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

**Notes:**

1. Employees (~~enrolled~~) cannot enroll in a medical FSA and a limited purpose FSA in the same year.
2. Employees enrolled in a consumer directed health plan (CDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. Employees who elect (~~both will only be enrolled~~) enrollment in the CDHP with a HSA and a medical FSA will instead be enrolled in the limited purpose FSA.
3. Employees who are not enrolled in a CDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.

(3) **During a special open enrollment:** An employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, limited purpose FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required form to their employing agency. The employing agency must receive the required form and evidence of the event that created the special open enrollment no later than (~~sixty~~) 60 days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** An employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the employee;
- Birth, adoption, or when the employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets public employee benefits board (PEBB) eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age (~~twenty-six~~) 26 or otherwise does not meet dependent child eligibility criteria;

- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
  - An eligible dependent dies.
- (iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);
- (iv) Employee has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group health plan;
- (v) The employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

**Note:** As used in (a)(v) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

- (vi) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB annual open enrollment;
- (vii) Employee or an employee's dependent has a change in residence that affects health plan availability;
- (viii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;
- (ix) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);
- (x) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;
- (xi) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB medical plan coverage from medicaid or CHIP;
- (xii) Employee or an employee's dependent enrolls in coverage under medicare or the employee or an employee's dependent loses eligibility for coverage under medicare;
- (xiii) Employee or an employee's dependent's current medical plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) requires evidence that the employee or employee's dependent is no longer eligible for an HSA;
- (xiv) Employee or an employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the employee or the employee's dependent. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:
- Active cancer treatment such as chemotherapy or radiation therapy;
  - Treatment following a recent organ transplant;
  - A scheduled surgery;
  - Recent major surgery still within the postoperative period; or

- Treatment for a high-risk pregnancy.

(xv) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

If the employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical FSA and limited purpose FSA.** An employee may enroll or revoke their election and make a new election under the medical FSA or limited purpose FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;
- Birth, adoption, or when the employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age (~~(twenty-six)~~) 26 or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the HIPAA;

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the medical FSA or limited purpose FSA;

(v) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** An employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under an employer-based (~~(group health plan)~~) DCAP during its annual open enrollment that does not align with the PEBB annual open enrollment;

(iv) Employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b) (1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the employee as defined in IRC 26 U.S.C. Sec. 152.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-199, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-199, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-199, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-199, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-199, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-199, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-199, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-199, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-199, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR

12-20-022 (Order 2012-01), § 182-08-199, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-199, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-199, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-199, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-199, filed 10/1/08, effective 1/1/09.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-08-235 Employer group and board of directors for school districts and educational service districts application process.** This section applies to employer groups as defined in WAC 182-08-015 and board members of school districts and educational service districts. An employer group or board member of a school district or an educational service district may apply to obtain public employees benefits board (PEBB) insurance coverage through a contract with the health care authority (HCA).

(1) Employer groups and board members of school districts and educational service districts with less than (~~five hundred~~) 500 employees must apply at least (~~sixty~~) 60 days before the requested coverage effective date. Employer groups with (~~five hundred~~) 500 or more employees but with less than (~~five thousand~~) 5,000 employees must apply at least (~~ninety~~) 90 days before the requested effective date.

Employer groups with (~~five thousand~~) 5,000 or more employees must apply at least (~~one hundred twenty~~) 120 days before the requested coverage effective date. To apply, employer groups must submit the documents and information described in subsection (2) of this section to the PEBB program as follows:

(a) Board members of school districts and educational service districts and educational service districts applying for their nonrepresented employees are required to provide the documents described in subsection (2)(a) through (c) of this section;

**Exception:** Educational service districts required by the superintendent of public instruction to purchase PEBB insurance coverage provided by the authority are required to submit documents and information described in subsection (2)(a)(iii), (b), and (c) of this section.

(b) Counties, municipalities, political subdivisions, and tribal governments with fewer than (~~five thousand~~) 5,000 employees are required to provide the documents and information described in subsection (2)(a) through (f) of this section;

(c) Counties, municipalities, political subdivisions, and tribal governments with (~~five thousand~~) 5,000 or more employees will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section; and

(d) All employee organizations representing state civil services employees and the Washington health benefit exchange, regardless of the number of employees, will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section.

(2) Documents and information required with application:

(a) A letter of application that includes the information described in (a)(i) through (iv) of this subsection:

- (i) A reference to the group's authorizing statute;
- (ii) A description of the organizational structure of the group and a description of the employee bargaining unit or group of nonrepresented employees for which the group is applying;
- (iii) Employer group or board members of school district or educational service district tax ID number (TIN); and
- (iv) A statement of whether the group is applying to obtain only medical or all available PEBB insurance coverages. (~~Educational service districts applying for its nonrepresented employees must purchase medical, dental, life, and long-term disability insurance. Board members of school districts or educational service districts must provide a statement of whether the group is applying to obtain medical, dental, and life insurance.~~)

**Note:** Educational service districts applying for its nonrepresented employees must provide a statement that the group is agreeing to obtain medical, dental, life, and long-term disability insurance. Board members of school districts or educational service districts must provide a statement that the group is agreeing to obtain medical, dental, and life insurance.

(b) A resolution from the group's governing body authorizing the purchase of PEBB insurance coverage.

(c) A signed governmental function attestation document that attests to the fact that employees for whom the group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(d) A member level census file for all of the employees for whom the group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or state registered domestic partner, or child:

- (i) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);
- (ii) Age;
- (iii) Birth sex;
- (iv) First three digits of the member's zip code based on residence;
- (v) Indicator of whether the employee is active or retired, if the group is requesting to include retirees; and
- (vi) Indicator of whether the member is enrolled in coverage.

(e) Historical claims and cost information that include the following:

- (i) Large claims history for (~~twenty-four~~) 24 months by quarter that excludes the most recent three months;
- (ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;
- (iii) Summary of historical plan costs; and
- (iv) The director or the director's designee may make an exception to the claims and cost information requirements based on the size of the group, except that the current health plan does not have a case management program, then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim. If historical claims and cost information as described in (e)(i) through (iii) of this subsection are unavailable, the director or the director's designee may make an exception to allow all of the following alternative requirements:

- A letter from their carrier indicating they will not or cannot provide claims data.

- Provide information about the health plan most employees are enrolled in by completing the actuarial calculator authorized by the PEBB program.

- Current premiums for the health plan.

(f) If the application is for a subset of the group's employees (e.g., bargaining unit), the group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in (d) of this subsection. This includes retired employees participating under the group's current health plan. The file must include the same demographic data by member.

(g) Employer groups described in subsection (1)(c) and (d) of this section must submit to an actuarial evaluation of the group provided by an actuary designated by the PEBB program. The group must pay for the cost of the evaluation. This cost is nonrefundable. A group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for (~~twenty-four~~) 24 months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;

(iv) Summary of benefits and certificate of coverage; and

(v) Summary of historical plan costs.

**Exception:** If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(3) The authority may automatically deny a group application if the group fails to provide the required information and documents described in this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-235, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-235, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-235, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-235, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-235, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-235, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-235, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-235, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-235, filed 9/25/12, effective 11/1/12.]

**OTS-3747.1**



AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

**WAC 182-12-109 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP) ((~~or~~), the medical flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3) (a) (ii).

"Blind vendor" means a "licensee" as defined in RCW 74.18.200.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of PEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or the public employees benefits board's policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13) (a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB insurance coverage by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, nonrepresented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group dental" means group dental related to a current employment relationship. It does not include dental coverage

available to retired employees, individual market dental coverage, or government-sponsored programs such as medicaid.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or an employer group for employees eligible in WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.

"Employing agency" for the public employees benefits board means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree medical plan" means the Federal Employees Health Benefits program (FEHB) or TRICARE plans which are not employer-based group medical.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premium is less than (~~ninety-five~~) 95 percent of the ad-

ditional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

• The benefits have an actuarial value of at least (~~ninety-five~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" includes:

(a) Through December 31, 2023, all employees of school districts and charter schools established under chapter 28A.710 RCW, and represented employees of educational service districts. For the exclusive purpose of eligibility for PEBB retiree insurance coverage, the term "school employee" also includes nonrepresented employees of an educational service district; and

(b) Effective January 1, 2024, all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW.

"SEBB" means the school employees benefits board.

"SEBB insurance coverage" means any medical, dental, vision, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"Season" means any recurring annual period of work at a specific time of year that lasts three to (~~eleven~~) 11 consecutive months.

"Seasonal employee" means a state employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction(~~s~~) plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the employee in addition to the coverage provided by the employing agency.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means an eligible employee affirmatively declining enrollment in PEBB medical because the employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-12-128. An employee on approved educational leave who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-12-109, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-12-109, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-109, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-109, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-109, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-109, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-109, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-109, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-109, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-109, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-109, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160

and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-109, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-109, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-109, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-109, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-109, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-109, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-109, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

**WAC 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits?** Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include stand-by hours and any temporary increases in work hours, of six months or less, caused by training or emergencies (except governor-declared emergencies) that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Any hours worked in direct response to a governor-declared emergency are not excludable and must be included in determining eligibility. In order to include excluded hours in determining eligibility, employing agencies must request and receive the public employees benefits board (PEBB) program's approval.

For how the employer contribution toward PEBB benefits is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as described in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if they are anticipated to work an average of at least (~~eighty~~) 80 hours per month and are anticipated to work for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one

position or job to establish eligibility and maintain the employer contribution toward PEBB benefits. Employees become eligible through stacking when they meet the requirements described in (a) of this subsection. They must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

- (i) The employee works two or more positions or jobs at the same time (concurrent stacking);
- (ii) The employee moves from one position or job to another (consecutive stacking); or
- (iii) The employee combines hours from a seasonal position with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB benefits as described in WAC 182-12-131(1).

(d) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, employer-paid long-term disability (LTD) insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(2) **Seasonal employees,** as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if they are anticipated to work an average of at least (~~eighty~~) 80 hours per month and are anticipated to work for at least eight hours in each month of at least three consecutive months of the season.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that they will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least (~~eighty~~) 80 hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB benefits. Employees become eligible through stacking when they meet the requirements described in (a) of this subsection. They must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

- (i) The employee works two or more positions or jobs at the same time (concurrent stacking);



(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB benefits as described in WAC 182-12-131(1).

(d) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

**Exception:** Seasonal employees who work a recurring, annual season with a duration of less than nine months are not eligible for the employee-paid LTD insurance benefit.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which they are anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria as described in (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward PEBB benefits by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility as described in WAC 182-12-131(3). A faculty becomes eligible through stacking when they meet the requirements as described in (a) of this subsection. When a faculty works for more than one institution of higher education, the faculty must notify their employing agencies that they work at more than one institution and may be eligible through stacking.

(c) **When PEBB benefits begin.**

(i) Medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the

faculty declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the faculty declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, then coverage begins at the beginning of the second consecutive quarter/semester. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

**(4) Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date their term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), §

182-12-114, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-114, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-114, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-114, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-114, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-114, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-114, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-114, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-114, filed 11/17/09, effective 1/1/10.]

AMENDATORY SECTION (Amending WSR 21-13-102, filed 6/18/21, effective 1/1/22)

**WAC 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may they enroll in PEBB medical after having waived enrollment?** An employee may waive enrollment in public employees benefits board (PEBB) medical only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. They may not waive enrollment in PEBB medical if they are enrolled in PEBB retiree insurance coverage. An employee who waives enrollment in PEBB medical must enroll in PEBB dental, basic life insurance, basic accidental death and dismemberment insurance, and employer-paid long-term disability (LTD) insurance (unless the employing agency does not participate in these PEBB insurance coverages). For an employing agency that participates in LTD insurance, an employee will also be enrolled in employee-paid LTD insurance automatically unless the employee declines their employee-paid LTD insurance as described in WAC 182-08-197.

**Exception:** An employee may waive their enrollment in PEBB medical to enroll in school employees benefits board (SEBB) medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

(1) To waive enrollment in PEBB medical, the employee must submit the required form to their employing agency at one of the following times:

(a) **When the employee becomes eligible:** An employee may waive PEBB medical when they become eligible for PEBB benefits. The employee must indicate their election to waive enrollment in PEBB medical on the required form and submit the form to their employing agency. The employing agency must receive the form no later than (~~thirty-one~~) 31 days after the date the employee becomes eligible for PEBB benefits (see WAC 182-08-197). PEBB medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** An employee may waive PEBB medical during the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** An employee may waive PEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than an employee gaining initial eligibility or regaining eligibility for PEBB benefits.

The employee must submit the required form to their employing agency. The employing agency must receive the form no later than ~~((sixty))~~ 60 days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, PEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will be waived the last day of the previous month.

(2) If an employee waives PEBB medical, the employee may not enroll dependents in PEBB medical.

(3) Once PEBB medical is waived, the employee is only allowed to enroll in PEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows an employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The employee must submit the required form to their employing agency. The employing agency must receive the form no later than ~~((sixty))~~ 60 days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical for the employee will begin on the first day of the month in which the event occurs. PEBB medical for the newly born child, newly adopted child, spouse, or state registered domestic partner will begin as described in WAC 182-12-262

(3) (a) (iv).

If an employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the health care authority will notify the employee of their removal from the SEBB subscriber's account and that they have experienced a special enrollment event. The employee will be required to return from waived enrollment and elect PEBB medical and PEBB dental. If the employee's employing agency does not receive the employee's required forms indicating their medical and dental elections within ~~((sixty))~~ 60 days of

the employee losing SEBB medical, SEBB dental, and SEBB vision, they will be defaulted into employee-only PEBB medical and PEBB dental as described in WAC 182-08-197 (1)(b)(i) and (ii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the employee to enroll in PEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both.

(a) Employee acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group medical;

**Note:** As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Employee or an employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(f) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(g) A court order requires the employee or any other individual to provide a health plan for an eligible dependent of the employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

**Note:** An employee may only return from having waived PEBB medical for the events described in (h) of this subsection. An employee may not waive their PEBB medical for the events described in (h) of this subsection.

(i) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(j) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09. WSR 21-13-102 (Admin #2021-01.02), § 182-12-128, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-128, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-128, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-128, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-128, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-128, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-128, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-128, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-128, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-128, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-128, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-128, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-128, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-128, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-128, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-128, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-12-128, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-128, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-12-146 When is an enrollee eligible to continue public employees benefits board (PEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)?** (1) An employee or an employee's dependent who loses eligibility for the employer contribution toward public employees benefits board (PEBB) benefits and who qualifies for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue coverage for PEBB medical, dental, or both.

(2) An employee or an employee's dependent who loses eligibility for continuation coverage described in WAC 182-12-133, (~~(182-12-138,)~~) 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue PEBB medical, dental, or both for the remaining difference in months.

(3) A retired employee who loses eligibility for PEBB retiree insurance coverage because an employer group, with the exception of educational service districts, ceases participation in PEBB insurance coverage may continue PEBB medical, dental, or both.

(4) A retiree or a dependent of a retiree, who is no longer eligible as described in WAC 182-12-171, 182-12-180, or 182-12-260 may continue PEBB medical, dental, or both.

(5) A blind vendor who ceases to actively operate a facility as described in WAC 182-12-111 (5) (a) may continue enrollment in PEBB medical for the maximum number of months allowed under COBRA as described in this section.

(6) A board member who no longer qualifies as described in WAC 182-12-111 (5) (c) may continue enrollment in PEBB medical, dental, or both for the maximum number of months allowed under COBRA as described in this section.

(7) An enrollee may continue PEBB medical, dental, or both under COBRA by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

(a) The election must be received by the PEBB program no later than ~~((sixty))~~ 60 days from the date the enrollee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(b) The first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than ~~((forty-five))~~ 45 days after the election period ends as described in (a) of this subsection. Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1) (c);

(c) COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility as described in WAC 182-12-114. Those who request to terminate their COBRA coverage must do so in writing. COBRA coverage will end on the last day of the month in which the PEBB program receives the termination request or on the last day of the month specified in the COBRA enrollee's termination request, whichever is later. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month;

(d) An employee enrolled in a medical flexible spending arrangement (FSA) or limited purpose FSA and the employee's dependents will have an opportunity to continue making contributions to their medical FSA or limited purpose FSA by electing COBRA if on the date of the qualifying event, as described under 42 U.S.C. Sec. 300bb-3, the employee's medical FSA or limited purpose FSA has a greater amount in remaining benefits than remaining contribution payments for the current year. The election must be received by the contracted vendor no later than ~~((sixty))~~ 60 days from the date the PEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later. The first premium payment under COBRA coverage is due to the contracted vendor no later than ~~((forty-five))~~ 45 days after the election period ends as described above.

(8) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue PEBB medical, dental, or both on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

(9) Medical and dental coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for PEBB health plan coverage as described in WAC 182-12-131, 182-12-133, 182-12-141, 182-12-142, 182-12-148, 182-12-171, 182-12-180, 182-12-250, 182-12-260, or 182-12-265.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-146, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-146, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-146, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-146, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-146, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-146, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin 2013-01), § 182-12-146, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-146, filed 9/25/12, effective 11/1/12; WSR 09-23-102 (Order 09-02), § 182-12-146, filed 11/17/09, effective 1/1/10; WSR 07-20-129 (Order 07-01), § 182-12-146, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-146, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

**WAC 182-12-262 When may subscribers enroll or remove eligible dependents?** (1) **Enrolling dependents in public employees benefits board (PEBB) health plan coverage (~~and the effective date of~~), supplemental dependent life insurance, and accidental death and dismemberment (AD&D) insurance.** A dependent must be enrolled in the same health plan coverage as the subscriber(~~, and~~) except as described in WAC 182-12-171 (1)(c). The subscriber must be enrolled in health plan coverage to enroll their dependent in health plan coverage except as provided in WAC 182-12-205 (3)(c). A dependent with more than one source of eligibility for enrollment in the PEBB and school employees benefits board (SEBB) programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. Subscribers must satisfy the enrollment requirements as described in subsection (4) of this section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in PEBB benefits. If eligibility is verified the dependent's effective date will be as follows:

(i) PEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life insurance or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least (~~fourteen~~) 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year;

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section;



(d) **When a National Medical Support Notice (NMSN)** requires a subscriber to cover a dependent child in health plan coverage as described in WAC 182-12-263; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance. Supplemental dependent life insurance or AD&D insurance will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(2) **Removing dependents from a subscriber's PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.**

(a) **A dependent's eligibility for enrollment in PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-12-250 or 182-12-260. Subscribers must provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of a dependent ceasing to be eligible as a dependent child, as described in WAC 182-12-260(3). For supplemental dependent life insurance or AD&D insurance, subscribers must notify the contracted vendor on the required form, in writing, or by telephone when a dependent is no longer eligible. Contact information for the contracted vendor may be found at [hca.wa.gov/employees-contact-plan](http://hca.wa.gov/employees-contact-plan). For PEBB health plan coverage, the notice must be received within ((sixty)) 60 days of the last day of the month the dependent loses eligibility ((for PEBB health plan coverage)). Employees must notify their employing agency when a dependent is no longer eligible for PEBB health plan coverage, except as required under WAC 182-12-260 (3)(g)(ii). All other subscribers must notify the PEBB program. Consequences for not submitting notice within the required ((sixty)) 60 days include, but are not limited to:

(i) The dependent may lose eligibility to continue PEBB medical or dental under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility as described in WAC 182-12-270;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove eligible dependents:**

(i) During the annual open enrollment. The dependent will be removed from PEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-12-263(2); or

(iv) Any time during the calendar year from supplemental dependent life insurance or AD&D insurance by submitting ((the required form)) a request to the contracted vendor on the required form, in

writing, or by telephone. Contact information for the contracted vendor may be found at [hca.wa.gov/employees-contact-plan](http://hca.wa.gov/employees-contact-plan).

(c) **Retirees (see WAC 182-12-171, 182-12-180, or 182-12-211), survivors (see WAC 182-12-180, 182-12-250, or 182-12-265), and PEBB continuation coverage enrollees (see WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148) may remove dependents** from their PEBB health plan coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. The dependent will be removed from the subscriber's PEBB health plan coverage prospectively. PEBB health plan coverage will end on the last day of the month in which the written notice is received by the PEBB program or on the last day of the month specified in the subscriber's written notice, whichever is later. If the written notice is received on the first day of the month, PEBB health plan coverage will end on the last day of the previous month. PEBB continuation coverage enrollees may remove dependents from supplemental dependent life insurance or AD&D insurance any time during the calendar year by submitting ((the required form)) a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at [hca.wa.gov/employees-contact-plan](http://hca.wa.gov/employees-contact-plan).

(3) **Special open enrollment.**

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury Regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both. To disenroll from a medicare advantage or medicare advantage-prescription drug plan, the change in enrollment must be allowable under 42 C.F.R. Secs. 422.62(b) and 423.38(c).

(i) PEBB health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) PEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's PEBB health plan coverage the last day of the month following the later of the event date or the date the required form and proof of the event is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, PEBB health plan coverage will begin or end as follows:

- For the newly born child, PEBB health plan coverage will begin the date of birth;
- For a newly adopted child, PEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;
- For a spouse or state registered domestic partner of a subscriber, PEBB health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from PEBB health plan coverage the last day of the month in which the event occurred((†)).

(v) Supplemental dependent life insurance or AD&D insurance will begin the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) The events described in this subsection (3)(b)(i) of this section create a special open enrollment to enroll eligible dependents in supplemental dependent life insurance or AD&D insurance. Any one of the following events may create a special open enrollment to enroll or remove eligible dependents from PEBB health plan coverage:

(i) Subscriber acquires a new dependent due to:

- Marriage or registering a state registered domestic partnership;
- Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

**Note:** As used in (iv) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(v) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(vii) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(viii) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

**(4) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection.** For PEBB health plan coverage, an employee must submit the required forms to their employing agency, a subscriber on continuation coverage or PEBB retiree insurance coverage must submit the required forms to the PEBB program. In addition to the required forms indicating dependent

enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the required time frames. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

**Note:** When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the PEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in PEBB health plan coverage when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the required time frame described in WAC 182-08-197, (~~(182-08-187)~~) 182-12-171, 182-12-180, 182-12-211, or 182-12-250. If an employee enrolls a dependent in supplemental dependent life insurance or AD&D insurance, the required form must be submitted within the required time frame described in WAC 182-08-197 (~~or 182-08-187~~).

(b) If a subscriber wants to enroll eligible dependents in PEBB health plan coverage during the PEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than (~~(sixty)~~) 60 days after the dependent becomes eligible. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. An employee may enroll a dependent in supplemental dependent life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption in PEBB health plan coverage, the subscriber should notify the PEBB program by submitting the required forms as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required forms must be received no later than (~~(sixty)~~) 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval no later than 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. A newly born child must be at least (~~(fourteen)~~) 14 days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age (~~(twenty-six)~~) 26 or older as a child with a disability in PEBB health plan coverage, the required forms must be received no later than (~~(sixty)~~) 60 days after the child reaches age (~~(twenty-six)~~) 26 or within the relevant time frame described in (a), (b), and (f) of this subsection. To recertify an enrolled child with a disability, the required forms must

be received by the PEBB program or the contracted vendor by the child's scheduled PEBB health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in PEBB health plan coverage during a special open enrollment, the required forms must be received no later than (~~sixty~~) 60 days after the event that creates the special open enrollment.

**Exception:** If the subscriber wants to change a dependent's enrollment or disenrollment in a medicare advantage or medicare advantage-prescription drug plan, the required forms must be received during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and 423.38(c).

(g) An employee may enroll a dependent in supplemental dependent life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-12-262, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-12-262, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-262, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-262, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-262, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-262, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-262, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-262, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-262, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-262, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-262, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-262, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-262, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-262, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-262, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-262, filed 4/8/08, effective 4/9/08.]

AMENDATORY SECTION (Amending WSR 21-13-102, filed 6/18/21, effective 1/1/22)

**WAC 182-12-263 National Medical Support Notice (NMSN).** (1) When a National Medical Support Notice (NMSN) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(a) The subscriber may enroll their dependent child and request changes to their health plan coverage as described under subsection (c) of this section. Employees submit the required forms to their em-

ploying agency. Subscribers on continuation coverage or PEBB retiree insurance coverage submit the required forms to the public employees benefits board (PEBB) program.

(b) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to (c) of this subsection upon request of:

- (i) The child's other parent; or
- (ii) Child support enforcement program.

(c) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

- (i) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;
- (ii) An employee who has waived PEBB medical under WAC 182-12-128 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;
- (iii) The subscriber's selected health plan will be changed if directed by the NMSN;
- (iv) If the dependent is already enrolled under another PEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN;
- (v) If the dependent is enrolled in both school employees benefits board medical and PEBB medical as a dependent as described in WAC 182-12-123 (6) ~~((f))~~ (g) and there is a NMSN in place, enrollment will be in accordance with the NMSN; or
- (vi) If the subscriber is eligible for and elects Consolidated Omnibus Budget Reconciliation Act (COBRA) or other continuation coverage, the NMSN will be enforced and the dependent must be covered in accordance with the NMSN.

(d) Changes to health plan coverage or enrollment as described in (c) (i) through (iii) of this subsection will begin the first day of the month following receipt by the employing agency of the NMSN. If the NMSN is received by the employing agency on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in (c) (iv) of this subsection the last day of the month the NMSN is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(2) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided, the dependent may be removed from the subscriber's PEBB health plan coverage prospectively.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09. WSR 21-13-102 (Admin #2021-01.02), § 182-12-263, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-263, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-263, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-263, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-263, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW

41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-263, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-263, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-263, filed 9/25/12, effective 11/1/12.]

AMENDATORY SECTION (Amending WSR 21-13-105, filed 6/18/21, effective 1/1/22)

**WAC 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements.** The board annually determines the design of the PEBB wellness incentive program.

(1) All subscribers, except PEBB subscribers who are enrolled in both medicare Parts A and B, and in the medicare risk pool as described in RCW 41.05.080(3), are eligible to participate in the PEBB wellness incentive program.

(2) Effective January 1, 2020, to receive the PEBB wellness incentive of a reduction to the subscriber's medical plan deductible or a deposit to the subscriber's health savings account for the following plan year, eligible subscribers must complete PEBB wellness incentive program requirements during the current plan year by the following deadline:

(a) For subscribers continuing enrollment in PEBB medical and subscribers enrolling in PEBB medical with an effective date in January through September, the deadline is November 30th; or

(b) For subscribers enrolling in PEBB medical with an effective date in October through December, the deadline is December 31st.

(3) Subscribers who do not complete the requirements according to subsection (2) of this section, except as noted, within the time frame described are not eligible to receive a PEBB wellness incentive the following plan year.

**Note:** All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The contracted vendor will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

(4) A PEBB wellness incentive will be provided only if:

(a) For the wellness incentive described in subsection (2) of this section the subscriber is still eligible (~~(for)~~) to participate in the PEBB wellness incentive program and is enrolled in a PEBB medical plan in the year the incentive applies;

(b) The funding rate provided by the legislature is designed to provide a PEBB wellness incentive program or a PEBB wellness incentive, or both; or

(c) Specific appropriations are provided for wellness incentives.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-15. WSR 21-13-105 (Admin #2021-01.05), § 182-12-300, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-300, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-300, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-300, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-300, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.160, 2015 c 116, and

PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-300, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-300, filed 3/26/14, effective 4/26/14.]

### OTS-3749.1

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

**WAC 182-16-020 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Appellant" means a person who requests a brief adjudicative proceeding with the PEBB appeals unit about the action of the employing agency, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494 and in WAC 182-16-2000 through 182-16-2160.

"Business days" means all days except Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of when a brief adjudicative proceeding or formal administrative hearing will occur.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, an employing agency, contracted vendor, or the PEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state employees may pay for certain employment related



dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Dispositive motion" means a motion made to a presiding officer, ((review)) reviewing officer, or hearing officer to decide a claim or case in favor of the moving party without further proceedings.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, nonrepresented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the

authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, (~~review~~) reviewing officer, or hearing officer. A document is considered filed when it is received by the authority or its designee. A document may be filed by one or more of the following:

- Personal delivery to the authority at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, Washington 98501;

- First class, registered, or certified mail to the authority to the following mailing address:

Health Care Authority  
Attn: PEBB Appeals Unit  
P.O. Box 45504  
Olympia, WA 98504-5504;

- Fax: 360-763-4709; or

- Submission online through the designated submission portal.

The identified methods are the exclusive methods for a document to be filed, and submission of documents by any other fashion to the authority shall not constitute filing unless agreed to in advance by the authority.

"Final order" means an order that is the final health care authority decision.

"Formal administrative hearing" means a proceeding before a hearing officer that gives an appellant an opportunity for an evidentiary hearing as described in RCW 34.05.413 through 34.05.476 and WAC 182-16-3000 through 182-16-3200.

"HCA hearing representative" means a person who is authorized to represent the PEBB program in a formal administrative hearing. The person may be an assistant attorney general or authorized HCA employee.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing officer" means an impartial decision maker who presides at a formal administrative hearing, and is:

- A director-designated HCA employee; or

- When the director has designated the office of administrative hearings (OAH) as a hearing body, an administrative law judge employed by the OAH.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees

includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

- The spouse's or state registered domestic partner's share of the medical premiums is less than (~~ninety-five~~) 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and
- The benefits have an actuarial value of at least (~~ninety-five~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Presiding officer" means an impartial decision maker who conducts a brief adjudicative proceeding and is a director-designated HCA employee.

"Public employee" has the same meaning as employee.

"((Review)) Reviewing officer or officers" means one or more delegates from the director that consider appeals relating to the administration of PEBB benefits by the PEBB program.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Service" or "serve" means the process described in WAC 182-16-058.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education, and any unit of state government established by law.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-16-020, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-16-020, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-020, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-020, filed 10/29/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and PEBB policy resolutions. WSR 17-19-077 (Order 2017-01), § 182-16-020, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-16-020, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-16-020, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-020, filed

9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-16-020, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-16-020, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-020, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-16-020, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-16-020, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-16-020, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-16-020, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.010 and 34.05.250. WSR 91-14-025, § 182-16-020, filed 6/25/91, effective 7/26/91.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-058 Service or serve.** (1) When the rules in this chapter or in other public employees benefits board (PEBB) program rules or statutes require a party to serve copies of documents on other parties, a party must send copies of the documents to all other parties or their representatives as described in this chapter. In this section, requirements for service or delivery by a party apply also when service is required by the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer.

(2) Unless otherwise stated in applicable law, documents may be sent only as identified in this chapter to accomplish service. A party may serve someone by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail sent via the United States Postal Service or Washington state consolidated mail services;

(c) Fax;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party must serve all other parties or their representatives whenever the party files a motion, pleading, brief, or other document with the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer's office, or when required by law.

(4) Unless otherwise stated in applicable law, service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States Postal Service;

(c) Mail is properly addressed, and deposited in the Washington state consolidated mail services;

(d) Fax produces proof of transmission;

(e) A parcel is delivered to a commercial delivery service with charges prepaid; or

(f) A parcel is delivered to a legal messenger service with charges prepaid.

(5) A party may prove service by providing any of the following:

(a) A signed affidavit of mailing or certificate of service;

(b) The certified mail receipt signed by the person who received the parcel;

(c) A signed receipt from the person who accepted the commercial delivery service or legal messenger service parcel;

(d) Proof of fax transmission.

(6) Service cannot be made by electronic mail unless mutually agreed to in advance and in writing by the parties.

(7) If the document is a subpoena, follow the compliance procedure as described in WAC 182-16-3130.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-058, filed 7/28/20, effective 1/1/21; WSR 18-22-033 (Admin #2018-03), § 182-16-058, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

**WAC 182-16-064 Applicable rules and laws.** (1) An employing agency must apply public employees benefits board (PEBB) program rules adopted in the Washington Administrative Code (WAC) and follow instructions from the authority.

(2) A presiding officer, (~~review~~) reviewing officer or officers, or hearing officer must first apply the applicable PEBB program rules adopted in the WAC. If no PEBB program rule applies, the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-16-130, and court decisions.

[Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-064, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-064, filed 10/29/18, effective 1/1/19. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-064, filed 9/25/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-066 Burden of proof, standard of proof, and presumptions.** (1) The burden of proof is a party's responsibility to provide evidence regarding disputed facts and persuade the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer that a position is correct based on the standard of proof. Unless stated otherwise in rules or law, the appellant has the burden of proof in a brief adjudicative proceeding or formal administrative hearing.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a brief adjudicative proceeding or formal admin-

istrative hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and state agencies are presumed to have properly performed their duties and acted as described in the law, unless (~~substantial~~) preponderance of the evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-066, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-066, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033, § 182-16-066 (Admin #2018-03), filed 10/29/18, effective 1/1/19. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-066, filed 9/25/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

**WAC 182-16-2000 Brief adjudicative proceedings.** Pursuant to RCW 34.05.482, the authority (~~will~~) may use brief adjudicative proceedings for issues identified in this chapter when doing so would not violate law, or when protection of the public interest does not require the authority to give notice and an opportunity to participate to persons other than the parties, or the issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.476 which govern formal administrative hearings.

[Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2000, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2000, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 18-22-033, filed 10/29/18, effective 1/1/19)

**WAC 182-16-2005 Record—Brief adjudicative proceeding.** The record in a brief adjudicative proceeding consists of any documents regarding the matter, considered or prepared by the presiding officer for the brief adjudicative proceeding or by the (~~review~~) reviewing officer or officers for any review. The authority's record does not have to constitute the exclusive basis for agency action, unless otherwise required by law.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2005, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-2050 How can an employee appeal a decision regarding the administration of benefits offered under the salary reduction plan?** (1) Any employee who disagrees with a decision that denies eligibility for, or enrollment in, a benefit offered under the salary reduction plan may appeal that decision by submitting a written request for administrative review to their state agency. The state agency must receive the written request for administrative review no later than ~~((thirty))~~ 30 days after the date of the denial. The contents of the written request for administrative review are to be provided as described in WAC 182-16-2070.

(a) Upon receiving the written request for administrative review, the state agency must perform a complete review of the denial by one or more staff who did not take part in the decision resulting in the denial.

(b) The state agency must render a written decision within ~~((thirty))~~ 30 days of receiving the written request for administrative review. The written decision must be sent to the employee who submitted the written request for review and must include a description of appeal rights. The state agency must also send a copy of the state agency's written decision to the state agency's administrator (or designee) and to the PEBB appeals unit. If a state agency fails to render a written decision within ~~((thirty))~~ 30 days of receiving the written request for administrative review, the request for administrative review may be considered denied as of the ~~((thirty-first))~~ 31st day and the original underlying state agency decision may be appealed to the PEBB appeals unit by following the process in this section.

(2) Any employee who disagrees with the state agency's decision in response to a written request for administrative review, as described in this section, may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the PEBB appeals unit.

(a) The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than ~~((thirty))~~ 30 days after the date of the state agency's written decision on the request for administrative review. If a state agency fails to render a written decision within ~~((thirty))~~ 30 days of receiving a written request for administrative review, the PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than ~~((thirty))~~ 30 days after the date the request for administrative review was deemed denied. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The PEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the PEBB appeals unit receives a request for a brief adjudicative proceeding, the PEBB appeals unit will send a request for documentation and information to the applicable state agency. The state agency will then have two business days to respond to the request and provide the documentation and information requested. The state agency will also send a copy of the documentation and information to the employee.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.



(b) If an employee fails to timely request a brief adjudicative proceeding, the state agency's prior written decision becomes the authority's final order without further action.

(3) Any employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement or limited purpose flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may appeal that decision to the authority's contracted vendor by following the appeal process of that contracted vendor.

(a) Any employee who disagrees with a decision in response to an appeal filed with the contracted vendor that administers the medical FSA, limited purpose FSA, and DCAP under the salary reduction plan may request a brief adjudicative proceeding by submitting a written request to the PEBB appeals unit. The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than (~~thirty~~) 30 days after the date of the contracted vendor's appeal decision. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The PEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If an employee fails to timely request a brief adjudicative proceeding, the contracted vendor's prior written decision becomes the authority's final order without further action.

(4) Any employee aggrieved by a decision regarding the administration of the premium payment plan offered under the salary reduction plan may request a brief adjudicative proceeding to be conducted by the authority by submitting a written request to the PEBB appeals unit for a brief adjudicative proceeding.

(a) The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than (~~thirty~~) 30 days after the date of the denial notice by the PEBB program. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The PEBB appeals unit must notify the appellant in writing when the notice of appeal has been received.

(ii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If an employee fails to timely request a brief adjudicative proceeding, the PEBB program's prior written decision becomes the authority's final order without further action.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2050, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2050, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2050, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

**WAC 182-16-2080 Who can appeal or represent a party in a brief adjudicative proceeding?** (1) The appellant may act as their own representative or may choose to be represented by another person, except that employees of the health care authority (HCA) or HCA's authorized agents may not represent an appellant, unless approved by a presiding officer or (~~review~~) reviewing officer.

(2) If the appellant is represented by a person who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the nonattorney representative must provide the PEBB appeals unit and other parties with a signed, written consent permitting release to the nonattorney representative of the appellant's health information protected by state or federal law.

(3) An attorney admitted to practice law in Washington state representing the appellant must file a written notice of appearance containing the attorney's name, address, and telephone number with the presiding officer's office and serve all parties with the notice. In cases involving confidential information, the attorney must provide the PEBB appeals unit and other parties with a signed, written consent permitting release to the attorney of the appellant's health information protected by state or federal law. If the appellant's attorney representative no longer represents the appellant, then the attorney must file a written notice of withdrawal of representation with the presiding officer or (~~review~~) reviewing officer or officers' office and serve all parties with the notice.

[Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2080, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2080, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-2085 Continuances.** The presiding officer or (~~review~~) reviewing officer or officers may grant, in their sole discretion, a request for a continuance on motion of the appellant, the authority, or on their own. The continuance may be up to (~~thirty~~) 30 calendar days.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2085, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2085, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2085, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding.** (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding an employing agency decision, public employees benefits board (PEBB) program decision, or a decision made by a PEBB program contracted vendor, may request review of the initial order by the authority. The appellant (~~((must file))~~) may request review of the initial order by filing a written request for review of the initial order or (~~((make))~~) making an oral request (~~((for review of the initial order))~~) with the PEBB appeals unit within (~~((twenty-one))~~) 21 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If the appellant fails to request review of the initial order within (~~((twenty-one))~~) 21 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more (~~((review))~~) reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review, the authority may review an order resulting from a brief adjudicative proceeding on its own, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giving that party notice and an opportunity to explain that party's view of the matter.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2100, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2100, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2100, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

**WAC 182-16-2105 Withdrawing the request for a brief adjudicative proceeding or review of an initial order.** (1) The appellant may withdraw the request for a brief adjudicative proceeding or review of an initial order for any reason, and at any time, by contacting the public employees benefits board (PEBB) appeals unit. The PEBB appeals unit will present the withdrawal request to the presiding officer or (~~((review))~~) reviewing officer or officers.

(2) The request for withdrawal must be made in writing.

(3) After a withdrawal request is received, the presiding officer or (~~((review))~~) reviewing officer or officers must enter and serve a written order dismissing the brief adjudicative proceeding or review of an initial order.

(4) If an appellant withdraws a request for a brief adjudicative proceeding or review of an initial order, the appellant may not rein-

state the request for a brief adjudicative proceeding or review of an initial order unless time remains on their original appeal period.

[Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2105, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2105, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-2110 Final order.** (1) A final order issued by the (~~review~~) reviewing officer or officers will be in writing and include a brief statement of the reasons for the decision.

(2) The final order must be served within (~~twenty~~) 20 days of the date of the initial order or of the date the request for review of the initial order was received by the PEBB appeals unit, whichever is later.

(3) The final order will include a notice that reconsideration and judicial review may be available.

(4) A request for review of the initial order is deemed denied if the authority does not issue a final order within (~~twenty~~) 20 days after the request for review of the initial order is filed.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2110, filed 7/28/20, effective 1/1/21; WSR 18-22-033 (Admin #2018-03), § 182-16-2110, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-2120 Request for reconsideration.** (1) A request for reconsideration asks the (~~review~~) reviewing officer or officers to reconsider the final order because the party believes the (~~review~~) reviewing officer or officers made a mistake of law, mistake of fact, or clerical error.

(2) A request for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) Requests for reconsideration must be filed with the (~~review~~) reviewing officer or officers who entered the final order.

(4) If a party files a request for reconsideration:

(a) The (~~review~~) reviewing officer or officers must receive the request for reconsideration on or before the tenth business day after the service date of the final order;

(b) The party filing the request must send copies of the request to all other parties; and

(c) Within five business days of receiving a request for reconsideration, the (~~review~~) reviewing officer or officers must serve all parties a notice that provides the date the request for reconsideration was received.

(5) The other parties may respond to the request for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(a) Responses to a request for reconsideration must be received by the ((~~review~~)) reviewing officer or officers no later than seven business days after the service date of the ((~~review~~)) reviewing officer or officers' notice as described in subsection (4)(c) of this section, or the response will not be considered.

(b) Service of responses to a request for reconsideration must be made to all parties.

(6) If a party needs more time to file a request for reconsideration or respond to a request for reconsideration, the ((~~review~~)) reviewing officer or officers may extend the required time frame if the party makes a written request providing a good reason for the request within the required time frame.

(7) Unless the request for reconsideration is denied as untimely filed under subsection (4)(a) of this section, the same ((~~review~~)) reviewing officer or officers who entered the final order, if reasonably available, will also consider the request as well as any responses received.

(8) The decision on the request for reconsideration must be in the form of a written order denying the request, granting the request in whole or in part and issuing a new written final order, or granting the request and setting the matter for further hearing.

(9) If the ((~~review~~)) reviewing officer or officers do not send an order on the request for reconsideration within ((~~twenty~~)) 20 calendar days of the date of the notice described in subsection (4)(c) of this section, the request is deemed denied.

(10) If any party files a request for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the filing of a request for reconsideration is not required before requesting judicial review.

(11) An order denying a request for reconsideration is not subject to judicial review.

(12) No evidence may be offered in support of a motion for reconsideration, except newly discovered evidence that is material for the party moving for reconsideration and that the party could not with reasonable diligence have discovered and produced prior to the final order being issued.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2120, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2120, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2120, filed 10/29/18, effective 1/1/19.]

#### NEW SECTION

**WAC 182-16-2135 Petitions for judicial review—Service on the authority.** 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 public employees benefits board (PEBB) appeals unit at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98501 or received by mail at the PEBB appeals unit, P.O. Box 45504, Olympia, WA 98504-5504.

[ ]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-2150 ((Review)) Reviewing officer or officers—Designation and authority.** (1) The designation of a ((review)) reviewing officer or officers must be consistent with the requirements of RCW 34.05.491 and the ((review)) reviewing officer or officers must not have personally participated in the decision made by the employing agency or PEBB program.

(2) The ((review)) reviewing officer or officers must review the initial order and the record to determine if the initial order was correctly decided and make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing.

(3) The ((review)) reviewing officer or officers will issue a final order that will either:

- (a) Affirm the initial order in whole or in part; or
- (b) Reverse the initial order in whole or in part; or
- (c) ~~((Convert the matter to a formal administrative hearing; or~~
- ~~(d))~~ Remand to the presiding officer in whole or in part.

(4) A ((review)) reviewing officer or officers are limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(5) A ((review)) reviewing officer or officers may not decide that a rule is invalid or unenforceable.

(6) In addition to the record, the ((review)) reviewing officer or officers may employ the authority's expertise as a basis for the decision.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2150, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2150, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2150, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing.** (1) The presiding officer or the ((review)) reviewing officer or officers, in their sole discretion, may convert a brief adjudicative proceeding to a formal administrative

hearing at any time before the final order is issued on motion by ~~((the subscriber or enrollee or their))~~:

(a) The appellant;

(b) The representative(~~(, the))~~ of the appellant;

(c) The authority(~~(, or on the))~~; or

(d) The presiding officer or ((review)) reviewing officer or ((officers' own)) officers.

(2) The presiding officer or ((review)) reviewing officer or officers must convert the brief adjudicative proceeding to a formal administrative hearing when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the authority to give notice and an opportunity to participate to persons other than the parties, or when the issues and interests involved in the controversy warrant the use of the procedures or RCW 34.05.413 through 34.05.476 that govern formal administrative hearings.

(3) When a brief adjudicative proceeding is converted to a formal administrative hearing, the director designates a hearing officer to conduct the formal administrative hearing upon notice to the ~~((subscriber or enrollee))~~ appellant and the authority.

(4) When a brief adjudicative proceeding is converted to a formal administrative hearing, WAC 182-16-010 through 182-16-130 and 182-16-3000 through 182-16-3200 apply to the formal administrative hearing.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2160, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2160, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2160, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

**WAC 182-16-3170 Office of administrative hearings—Initial or final order ((deadline))—Required information.** (1) ~~((Within ninety days after the formal administrative hearing record is closed, the hearing officer must serve a copy of the final order to all parties))~~ **Initial order:** When the office of administrative hearings is holding a formal administrative hearing on behalf of the authority, the hearing officer must render a written initial order that addresses the issue or issues raised by the appellant in their appeal. The hearing officer must serve a copy of the initial order on all parties and the initial order must contain information on how the appellant may request review of the initial order.

(2) **Final order:** The final order will only be issued by the authority. After the reviewing officer or officers receives a request for review, the reviewing officer or officers has 20 calendar days to enter and serve a final order to all parties unless the reviewing officer serves notice allowing more time.

~~((2))~~ (3) In the written final order, the hearing officer must:

- (a) Identify the order as a final order of the public employees benefits board (PEBB) program;
- (b) List the name and docket number of the case and the names of all parties and representatives;
- (c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;
- (d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;
- (e) State the law that applies to the dispute;
- (f) Apply the law to the facts of the case in the conclusions of law;
- (g) Discuss the reasons for the decision based on the facts and the law;
- (h) State the result and remedy ordered; and
- (i) Include any other information required by law or program rules.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-3170, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-3170, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-3170, filed 10/29/18, effective 1/1/19.]

#### NEW SECTION

**WAC 182-16-3175 How to request a review of an initial order by the office of administrative hearings.** (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding an employing agency decision, a public employees benefits board (PEBB) program decision, or a decision made by a PEBB program contracted vendor, may request review of the initial order or an oral request with the PEBB appeals unit within 20 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If such review is requested, the hearing officer or their designee from the authority, shall issue a final order in accordance with WAC 182-16-3030. If the appellant fails to request review of the initial order within 20 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review of the initial order, the authority may review an initial order issued by the office of administrative hearings on its own, and without notice to the parties, but it may not take action on review less favorable to any party than the initial order without giving that party notice and an opportunity to explain that party's view of the matter.

[ ]



NEW SECTION

**WAC 182-16-3210 Petitions for judicial review—Service on the authority.** 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 public employees benefits board (PEBB) appeals unit at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98501 or received by mail at the PEBB appeals unit, P.O. Box 45504, Olympia, WA 98504-5504.

[]

## WSR 22-10-082

## PROPOSED RULES

## HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2022-02.01—Filed May 3, 2022, 2:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-099.

Title of Rule and Other Identifying Information: WAC 182-08-197  
When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, elect public employees benefits board (PEBB) benefits and complete required forms?

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (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. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_\\_edPzYSMR9CMXCEzVIvwWw](https://us02web.zoom.us/webinar/register/WN__edPzYSMR9CMXCEzVIvwWw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 8, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1305, fax 360-586-9727, TTY telecommunication[s] relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement policy resolutions to support the PEBB program: Amended WAC 182-08-197 to implement Policy Resolutions PEBB 2022-01 Employees returning to work from active duty and PEBB 2022-04 Deferring PEBB retiree insurance coverage when the subscriber becomes eligible for the employer contribution.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Policy Resolutions PEBB 2022-01 and 2022-04.

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: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

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

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

May 3, 2022  
Wendy Barcus  
Rules Coordinator

## OTS-3746.1

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

**WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, elect public employees benefits board (PEBB) benefits and complete required forms?** An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment provided the employee is eligible to waive as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency or contracted vendor. Their employing agency or contracted vendor must receive the forms no later than (~~(thirty-one)~~) 31 days after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the employee's employing agency or contracted vendor as required. An employee may apply for enrollment in supplemental life insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For an employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. An employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at any time during the calendar year without evidence of insurability by submitting the required form to the contracted vendor.

(ii) Employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. An employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their employing agency. An employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their employing agency or the contracted vendor. For an employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the employing agency receives the required form requesting to reduce or decline the employee-paid LTD in-

surance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to their state agency. The form must be received by their state agency no later than (~~thirty-one~~) 31 days after the employee becomes eligible for PEBB benefits.

(iv) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee may enroll in the state's medical flexible spending arrangement (FSA) (~~(or)~~), limited purpose FSA, dependent care assistance program (DCAP), or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to their state agency. The form must be received by the state agency no later than (~~thirty-one~~) 31 days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency, or the authority's contracted vendor in the case of life insurance and AD&D insurance, does not receive the employee's required forms indicating medical, dental, life insurance, AD&D insurance, and LTD insurance elections, and the employee's tobacco use status attestation within (~~thirty-one~~) 31 days of the employee becoming eligible, their enrollment will be as follows for those elections not received within (~~thirty-one~~) 31 days:

- (i) A medical plan determined by the health care authority (HCA);
- (ii) A dental plan determined by the HCA;
- (iii) Basic life insurance;
- (iv) Basic AD&D insurance;
- (v) Employer-paid LTD insurance and employee-paid LTD insurance;
- (vi) Dependents will not be enrolled; and
- (vii) A tobacco use premium surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB benefits ends according to WAC 182-12-131. When an employee's employment ends, participation in the salary reduction plan ends.

(3) When an employee regains eligibility for the employer contribution toward PEBB benefits, including following a period of leave described in WAC 182-12-133(1), or after being between periods of leave as described in WAC 182-12-142 (1) and (2), or 182-12-131 (3)(e), PEBB medical and dental begin on the first day of the month the employee is in pay status eight or more hours, or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e).

**Note:** When an employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment if the employee chooses to waive enrollment as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than (~~thirty-one~~) 31 days

after the employee regains eligibility, except as described in (a) (i) and (b) of this subsection:

(i) An employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) An employee who was eligible to continue supplemental life insurance but discontinued that supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution;

(iii) An employee who was eligible to continue employee-paid LTD insurance but discontinued that coverage must submit evidence of insurability for employee-paid LTD insurance to the contracted vendor when they regain eligibility for the employer contribution.

(b) An employee or faculty in any of the following circumstances does not have to return a form indicating employee-paid LTD insurance elections. Their employee-paid LTD insurance will be automatically reinstated effective the first day of the month they are in pay status eight or more hours or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3) (e):

(i) The employee continued to self-pay for their employee-paid LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue employee-paid LTD insurance after losing eligibility for the employer contribution.

(c) If an employee's employing agency, or contracted vendor accepting forms directly, does not receive the required forms within (~~thirty-one~~) 31 days of the employee regaining eligibility, the employee's enrollment for those elections not received will be as described in subsection (1) (b) (i) through (vii) of this section, except as described in (a) (i) and (b) of this subsection.

(d) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116) the employee may enroll in the medical FSA (~~(or)~~), limited purpose FSA, DCAP, or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to the contracted vendor or their state agency. The contracted vendor or employee's state agency must receive the form no later than (~~thirty-one~~) 31 days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in a DCAP (~~(or)~~), a medical FSA, or a limited purpose FSA until the beginning of the next plan year, unless the time between employments is (~~thirty~~) 30 days or less and within the current plan year. The employee must notify their new state agency of the transfer by providing the new state agency's personnel, payroll, or benefits office the required form no later than (~~thirty-one~~) 31 days after the employee's first day of work with the new state agency.

(5) An employee's PEBB benefits elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB benefits for one month or more. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB benefits elections also remain the same when an employee has a break in employment that does not interrupt their employer contribution toward PEBB benefits.

(6) When a retiree becomes eligible for the employer contribution toward PEBB benefits, PEBB retiree insurance coverage will be automat-

ically deferred. The subscriber will be exempt from the deferral form requirement. When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they must enroll or defer PEBB retiree insurance coverage as described in WAC 182-12-171, 182-12-200, and 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-197, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and PEBB policy resolution 2020-04. WSR 20-16-059 (Admin #2020-01), § 182-08-197, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-197, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-197, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-197, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-197, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-197, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-197, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-197, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-197, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-197, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-197, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-197, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-197, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-08-197, filed 10/3/07, effective 11/3/07; WSR 06-11-156 (Order 06-02), § 182-08-197, filed 5/24/06, effective 6/24/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-08-197, filed 7/27/05, effective 8/27/05.]

## WSR 22-10-083

## PROPOSED RULES

## HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin 2022-02.02—Filed May 3, 2022, 2:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-099.

Title of Rule and Other Identifying Information: WAC 182-12-123  
Is dual enrollment in public employees benefits board (PEBB) and school employees benefits board (SEBB) prohibited?

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (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. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_\\_edPzYSMR9CMXCEzVIvwWw](https://us02web.zoom.us/webinar/register/WN__edPzYSMR9CMXCEzVIvwWw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 8, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1305, fax 360-586-9727, TTY telecommunication[s] relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement a policy resolution and to make technical amendments to support the PEBB program:

**1. Implement PEBB Policy Resolution:** Amended WAC 182-12-123 to implement Policy Resolution PEBB 2022-02 employees may waive enrollment in dental.

**2. Make other technical amendments:** Amended WAC 182-12-123 to add specific timelines when an employee must resolve their dual enrollment, to update citation references, to include additional WAC references, to clarify specific timelines when a school employee must resolve their dual enrollment, to provide a technical correction, and to add new language related to reinstating coverage retroactively.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Policy Resolution PEBB 2022-02.

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: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

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

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

May 3, 2022  
Wendy Barcus  
Rules Coordinator

### OTS-3776.1

AMENDATORY SECTION (Amending WSR 21-13-102, filed 6/18/21, effective 1/1/22)

#### **WAC 182-12-123 Is dual enrollment in public employees benefits board (PEBB) and school employees benefits board (SEBB) prohibited?**

Public employees benefits board (PEBB) medical and dental coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the PEBB program or school employees benefits board (SEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in PEBB medical and PEBB dental coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible employee may waive PEBB medical and enroll as a dependent under the PEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-12-128.

(3) A dependent enrolled in PEBB medical or PEBB dental who becomes eligible for PEBB benefits as an employee must elect to enroll in PEBB benefits as described in WAC 182-08-197 (1) or (3). This includes making an election to enroll in or waive enrollment in PEBB medical as described in WAC 182-12-128.

(a) If the employee does not waive enrollment in PEBB medical, the employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent. If the employee's spouse, state registered domestic partner, or parent does not take action to remove the employee (who is enrolled as a dependent) from their subscriber account, the PEBB program will automatically disenroll the employee's enrollment as a dependent the last day of the month before the employee's enrollment in PEBB benefits begins as described in WAC 182-12-114.

**Exception:** An enrolled dependent who becomes newly eligible for PEBB benefits as an employee may be dual-enrolled in PEBB medical and dental for one month. This exception is only allowed for the first month the dependent is enrolled as an employee, and only if the dependent becomes enrolled as an employee on the first working day of a month that is not the first day of the month.

(b) If the employee elects to waive their enrollment in PEBB medical, the employee will remain enrolled in PEBB medical under their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent.



(4) A child who is eligible for PEBB medical and PEBB dental under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in PEBB medical and a single enrollment in PEBB dental.

(5) When an employee is eligible for the employer contribution toward PEBB benefits due to employment in more than one PEBB-participating employing agency the following provisions apply:

(a) The employee must choose to enroll under only one employing agency.

**Exception:** Faculty who seek to establish or maintain eligibility as described in WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

(b) If the employee loses eligibility under the employing agency, they must notify their other employing agency no later than ~~((sixty))~~ 60 days from the date PEBB benefits end through the employing agency described in (a) of this subsection to transfer coverage.

(c) The employee's elections remain the same when an employee transfers their enrollment under one employing agency to another employing agency without a break in PEBB benefits for one month or more, as described in (b) of this subsection.

(6) An individual who has more than one source of eligibility for enrollment in the PEBB and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. An employee must elect to enroll in PEBB benefits as described in WAC 182-08-197, waive enrollment as described in WAC 182-12-128, or remove eligible dependents as described in WAC 182-12-262. If the ~~((individual))~~ employee takes no action to resolve the dual enrollment, the PEBB program or the SEBB program will automatically enroll or automatically disenroll the individual as described in (d) through (h) of this subsection.

(a) An eligible employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision as described in WAC 182-12-128. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

(b) An eligible employee who waives enrollment in PEBB medical when they are enrolled in other employer-based group medical, a TRI-CARE plan, or medicare as described in WAC 182-12-128, and are not enrolled in SEBB medical, may waive enrollment in PEBB dental only if they are enrolled in both SEBB dental and SEBB vision as an eligible dependent in the SEBB program.

(c) A school employee in the SEBB program who waives SEBB medical, SEBB dental, and SEBB vision for PEBB medical must be enrolled in PEBB dental. ~~If ((necessary,))~~ the school employee is not already enrolled in PEBB dental, the PEBB program will automatically enroll the ~~((individual))~~ school employee in the associated subscriber's PEBB dental.

~~((e))~~ (d) If the employee is enrolled only in PEBB dental, and is also enrolled in SEBB medical, and no action is taken to resolve their dual enrollment, the employee will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB dental in which they are enrolled. If the employee is not already enrolled in SEBB dental or SEBB vision, the SEBB program will automatically enroll them in both as described in WAC 182-31-070 (6)(g). The employee's enrollment in PEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

~~((d))~~ (e) If the employee is enrolled in PEBB medical and is also a school employee in the SEBB program and enrolled in SEBB medical, and the employee has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken by the employee to resolve their dual enrollment, they will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB medical and PEBB dental. The employee's enrollment in PEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the employee ~~((eligible under both the PEBB program as an employee and the SEBB program as a school employee is not enrolled in any medical, but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental), the employee will remain in SEBB vision and if enrolled, SEBB dental))~~ is not enrolled in medical under either the PEBB or SEBB program but is enrolled only in PEBB dental and SEBB vision (with or without enrollment in SEBB dental), the employee will remain in SEBB vision and if enrolled, SEBB dental. If the employee is not already enrolled in SEBB dental, the SEBB program will automatically enroll them as described in WAC 182-31-070 (6) (g). The PEBB program will automatically disenroll the employee from PEBB dental.

~~((e))~~ (f) If the employee's dependent is enrolled in any PEBB medical or PEBB dental plan, and the dependent is also a school employee in the SEBB program and enrolled in SEBB medical, and no action is taken by either the employee or the dependent to resolve the dependent's dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical and PEBB dental in which they are enrolled.

~~((f))~~ (g) If the employee's dependent is enrolled in both PEBB medical and SEBB medical as a dependent and has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken to resolve the dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical and PEBB dental if they are enrolled. If the employee's dependent who is eligible as a dependent in both the PEBB and SEBB programs is not enrolled in any medical but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental) as a dependent, the dependent will remain in SEBB vision and if enrolled, SEBB dental. The PEBB program will automatically disenroll the employee's dependent from PEBB dental.

**Exception:** If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

~~((g))~~ (h) If the employee's dependent, who is also a school employee in the SEBB program who the SEBB program automatically disenrolled from SEBB dental and SEBB vision, the PEBB program will automatically enroll the employee's dependent in PEBB dental, if they are not already enrolled.

~~((h))~~ (i) If the employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the employee will be required to return from waived enrollment as described in WAC 182-12-128 (3) (b).

(j) If the PEBB program automatically disenrolls an individual from PEBB medical or PEBB dental to resolve their dual enrollment as described in (e), (f), or (g) of this subsection, but later determines that the employee did take action to resolve their dual enrollment within the required timelines, the PEBB program will reinstate cover-

age retroactive to the first of the month in which the individual was disenrolled.

(7) A retiree who defers enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 by enrolling as an eligible dependent in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB and who loses the employer contribution for such coverage must enroll in PEBB retiree insurance coverage as described in WAC 182-12-200 or defer enrollment as described in WAC 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09. WSR 21-13-102 (Admin #2021-01.02), § 182-12-123, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-123, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-123, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-123, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-123, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-123, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-123, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-123, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-123, filed 9/25/12, effective 11/1/12; WSR 10-20-147 (Order 10-02), § 182-12-123, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-123, filed 11/17/09, effective 1/1/10; WSR 07-20-129 (Order 07-01), § 182-12-123, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-123, filed 8/26/04, effective 1/1/05.]

## WSR 22-10-084

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Admin #2022-02.03—Filed May 3, 2022, 2:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-099.

Title of Rule and Other Identifying Information: WAC 182-12-171

When is a retiring employee or a retiring school employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage?, 182-12-180 When is an elected and full-time appointed official of the legislative and executive branch of state government, or their survivor eligible to continue enrollment in public employees benefits board (PEBB) retiree insurance coverage?, 182-12-200 May a retiring employee, a retiring school employee, or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB), a Washington state educational service district, or school employees benefits board (SEBB) defer enrollment under PEBB retiree insurance coverage?, 182-12-211 May an employee or a school employee who is determined to be retroactively eligible for disability retirement enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage?, 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty, and 182-12-265 What options for continuing health plan enrollment are available to a surviving spouse, state registered domestic partner, or child, if an employee, a school employee, or a retiree dies?

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (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 for this webinar [https://us02web.zoom.us/webinar/register/WN\\_\\_edPzYSMR9CMXCEzVIvwWw](https://us02web.zoom.us/webinar/register/WN__edPzYSMR9CMXCEzVIvwWw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 8, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1305, fax 360-586-9727, telecommunication[s] relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement a policy resolution to support PEBB program: Amended WAC 182-12-171, 182-12-180, 182-12-200, 182-12-211, 182-12-250, and 182-12-265 to implement Policy Resolution PEBB 2022-03 Medicare advantage prescription drug (MA-PD) plan enrollment during the gap months.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Policy Resolution PEBB 2022-03.

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: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

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

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

May 3, 2022  
Wendy Barcus  
Rules Coordinator

### OTS-3748.3

AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

**WAC 182-12-171 When is a retiring employee or a retiring school employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage?** A retiring employee or a retiring school employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if they meet procedural and substantive eligibility requirements as described in subsections (1), (2), and (3) of this section. An elected and full-time appointed official of the legislative and executive branch of state government is eligible as described in WAC 182-12-180.

(1) **Procedural requirements.** A retiring employee or a retiring school employee must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) through (d) of this subsection:

(a) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than (~~sixty~~) 60 days after the employee's or the school employee's employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the employee's or the school employee's employer-paid coverage, COBRA coverage, or continuation coverage ends;

**((Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program no later than the last day of the month prior to the month the employee's or the school employee's employer-paid, COBRA coverage, or continuation coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, a retiring employee or a retiring school employee may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

**Note:** Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) The employee's or the school employee's first premium payment for PEBB retiree insurance coverage and applicable premium surcharges are due to the health care authority (HCA) no later than (~~forty-five~~) 45 days after the election period ends as described in (a) of this subsection. Following the employee's or the school employee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c); and

(c) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee;

**Exception:** If a retiring employee or a retiring school employee selects a medicare supplement plan or (~~medicare advantage-prescription drug~~) MA-PD plan, nonmedicare enrollees will be enrolled in the (~~Uniform Medical Plan (UMP)~~) UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(d) To defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must meet substantive eligibility requirements in subsection (2) of this section and defer enrollment as described in WAC 182-12-200 or 182-12-205.

**(2) Substantive eligibility requirements.**

An employee who is eligible for PEBB benefits through an employing agency, or a school employee who is eligible for SEBB benefits through a SEBB organization or basic benefits through an educational service district as defined in RCW 28A.400.270 who ends public employment may enroll or defer enrollment in PEBB retiree insurance coverage if they meet procedural and substantive eligibility requirements.

To be eligible to continue enrollment or defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must be vested in and eligible to retire under a Washington state-sponsored retirement plan when the employee's or school employee's employer-paid coverage, COBRA coverage, or continuation coverage ends. An exception to the requirement to be vested in and eligible to retire under a Washington state-sponsored retirement plan is provided for employees of an employer group in (c)(i) of this subsection.

(a) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011(25)), must meet their Plan 3 retirement eligibility criteria. The employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage.

(b) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age (~~fifty-five~~) 55 with (~~ten~~) 10 years of state service;

(c) A retiring employee of an employer group participating in PEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (c)(i) or (ii) of this subsection to be eligible to continue PEBB retiree insurance coverage, except for an educational service district employee who must meet the requirements as described in (d) of this subsection.

(i) A retiring employee who is eligible to retire under a retirement plan sponsored by an employer group or tribal government that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if they were a member of public employees retirement system Plan 1, if their date of hire with that employer group or tribal government was before October 1, 1977, or Plan 2, if their date of hire with that employer group or tribal government was on or after October 1, 1977.

(ii) A retiring employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in (a)(i) and (ii) of this subsection.

(iii) A retired employee of an employer group, except a Washington state educational service district, that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage if they enrolled after September 15, 1991. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(d) A retiring school employee must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring school employee who ends employment before October 1, 1993; or

(ii) A retiring school employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the school employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the school employee enrolled before 1995; or

(iii) A retiring school employee who is a member of a Plan 3 retirement system, also called a separated employee (defined in RCW 41.05.011(25)), must meet their Plan 3 retirement eligibility criteria; or

(iv) A school employee who retired as of September 30, 1993, and began receiving a monthly retirement plan payment from a Washington state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) is eligible if they enrolled in a PEBB health plan no later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) A retiring employee or a retiring school employee and their enrolled dependents who are eligible for medicare must enroll and maintain enrollment in both medicare Parts A and B if the employee or the school employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes eligible for medicare after enrollment in PEBB retiree insurance coverage, they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is eligible for medicare does not meet

this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee's eligibility will end as described in the termination notice sent by the PEBB program. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

**Note:** For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

- (4) Washington state-sponsored retirement plans include:
- (a) Higher education retirement plans;
  - (b) Law enforcement officers' and firefighters' retirement system;
  - (c) Public employees' retirement system;
  - (d) Public safety employees' retirement system;
  - (e) School employees' retirement system;
  - (f) State judges/judicial retirement system;
  - (g) Teachers' retirement system; and
  - (h) State patrol retirement system.
  - (i) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered Washington state-sponsored retirement systems for Washington State University Extension for an employee covered under PEBB benefits at the time of retirement.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-171, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolution WSR 19-17-073 (Admin #2019-01), § 182-12-171, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-171, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-171, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-171, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-171, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-171, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-171, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-171, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-171, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-171, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-171, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-171, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-171, filed 10/3/07, effective 11/3/07; WSR 06-11-156 (Order 06-02), § 182-12-171, filed 5/24/06, effective 6/24/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-171, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-171, filed 8/26/04, effective 1/1/05.]



AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

**WAC 182-12-180 When is an elected and full-time appointed official of the legislative and executive branch of state government, or their survivor eligible to continue enrollment in public employees benefits board (PEBB) retiree insurance coverage?** (1) An elected and full-time appointed official of the legislative and executive branch of state government is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage under the same terms as an outgoing legislator, when they voluntarily or involuntarily leave public office. The following officials are eligible if they meet the procedural requirements as described in subsection (3) of this section:

- (a) A member of the state legislature;
- (b) A statewide elected official of the executive branch;
- (c) An executive official appointed directly by the governor as the single head of an executive branch agency; or
- (d) An official appointed directly by a state legislative committee as the single head of a legislative branch agency or an official appointed to secretary of the senate or chief clerk of the house of representatives.

(2) The spouse, state registered domestic partner, or child of an official described in subsection (1) of this section who loses eligibility due to the death of the official may enroll as a survivor under PEBB retiree insurance coverage as described in (a) and (b) of this subsection and must meet procedural requirements to enroll or defer enrollment as described in subsection (3) of this section.

(a) The official's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The official's child may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(3) **Procedural requirements.** An official described in subsection (1) of this section or their survivor described in subsection (2) of this section must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) through (d) of this subsection:

(a) For an official to enroll in PEBB retiree insurance coverage the required forms must be received by the PEBB program no later than ((sixty)) 60 days after the official leaves public office. The effective date of PEBB retiree insurance coverage is the first day of the month after the official leaves public office;

For a survivor to enroll in PEBB retiree insurance coverage, the required forms must be received by the PEBB program no later than ((sixty)) 60 days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the date of the official's death or the first day of the month after the survivor's PEBB insurance coverage ends;

**(Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program before the official leaves public office or no later than the last day of the month prior to the month PEBB insurance coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

**Note:** Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) The official's or survivor's first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than (~~forty-five~~) 45 days after the official's or survivor's election period ends as described in (a) of this subsection. Following the official's or survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c);

(c) If an official or a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the official or survivor;

**Exception:** If an official or a survivor selects a medicare supplement plan or (~~medicare advantage prescription drug~~) MA-PD plan, nonmedicare enrollees will be enrolled in the (~~Uniform Medical Plan (UMP)~~) UMP Classic. If an official or a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(d) To defer enrollment in PEBB retiree insurance coverage the official or the survivor must meet deferral enrollment requirements as described in WAC 182-12-200 or 182-12-205.

(4) If the official, an enrolled dependent, or their survivor is eligible for medicare or becomes eligible for medicare after enrollment in PEBB retiree insurance coverage, they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is eligible for medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee's eligibility will end as described in the termination notice sent by the PEBB program. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

**Note:** For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(5) An official described in subsection (1) of this section shall be included in the term "retiree" or "retiring employee" as used in chapters 182-08, 182-12, and 182-16 WAC.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-180, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-180, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-180, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-180, filed 9/15/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 21-13-104, filed 6/18/21, effective 1/1/22)

**WAC 182-12-200 May a retiring employee, a retiring school employee, or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB), a Washington state educational service district, or school employees benefits board (SEBB) defer enrollment under PEBB retiree insurance coverage?** (1) A retiring employee or a retiring school employee may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage at retirement if they meet substantive eligibility requirements as described in WAC 182-12-171(2) or as described in WAC 182-12-180(1). An enrolled retiree may defer enrollment after enrolling in PEBB retiree insurance coverage. Enrollment in PEBB retiree insurance coverage may

be deferred when they are enrolled as a dependent in a health plan sponsored by PEBB, a Washington state educational service district, or school employees benefits board (SEBB), including such coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage.

(2) A retiring employee, a retiring school employee, or a retiree who defers enrollment in PEBB retiree insurance coverage defers enrollment in PEBB medical and PEBB dental. A retiree must be enrolled in PEBB medical to enroll in PEBB dental. A retiree who defers enrollment also defers enrollment for all eligible dependents. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3) (b).

(3) A retiring employee, a retiring school employee, or a retiree who defers enrollment as described in this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB. A gap of (~~thirty-one~~) 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB, and between each period of enrollment in qualifying coverages as described in WAC 182-12-205 (3) (a) through (e) during the deferral period:

(a) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(b) When enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB ends, or such coverage under COBRA or continuation coverage ends. The required forms to enroll must be received by the PEBB program no later than (~~sixty~~) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month following the date the other coverage ends. To continue in a deferred status, the retiree must defer enrollment as described in WAC 182-12-205.

**(Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the other coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).)

**Note:** Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(c) If a retiree elects to enroll a dependent in PEBB health plan coverage as described in this subsection, the dependent must be enrolled in the same PEBB medical or PEBB dental plan as the retiree.

**Exception:** If a retiree selects a medicare supplement plan or (~~medicare advantage-prescription drug~~) MA-PD plan, nonmedicare enrollees will be enrolled in the (~~Uniform Medical Plan (UMP)~~) UMP Classic. If a retiree selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-200, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-200, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin

#2019-01), § 182-12-200, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-200, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-200, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-200, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-200, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-200, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-200, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-200, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-200, filed 8/26/04, effective 1/1/05. Statutory Authority: RCW 41.05.160. WSR 01-17-041 (Order 01-00), § 182-12-200, filed 8/9/01, effective 9/9/01; WSR 97-21-127, § 182-12-200, filed 10/21/97, effective 11/21/97. Statutory Authority: Chapter 41.05 RCW. WSR 96-08-043, § 182-12-200, filed 3/29/96, effective 4/29/96; Order 4-77, § 182-12-200, filed 11/17/77.]

AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

**WAC 182-12-211 May an employee or a school employee who is determined to be retroactively eligible for disability retirement enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage?** (1) An employee or a school employee who is determined to be retroactively eligible for a disability retirement is eligible to enroll or defer enrollment (as described in WAC 182-12-200 or 182-12-205) in public employees benefits board (PEBB) retiree insurance coverage if:

(a) The employee or the school employee submits the required form and a copy of the formal determination letter they received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's or the school employee's form and a copy of their Washington state-sponsored retirement system's formal determination letter are received by the PEBB program no later than (~~sixty~~) 60 days after the date on the determination letter; and

(c) The employee or the school employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan benefit under their higher education retirement plan (HERP), with exceptions described below from WAC 182-12-171(2):

(i) A retiring employee of a state agency, an employer group participating under a Washington state sponsored retirement plan, or a retiring school employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee of a state agency, an employer group participating under a Washington state sponsored retirement plan, or a retiring school employee who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011(25)), must meet their Plan 3 retirement eligibility criteria. The employee or the

school employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage; or

(iii) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age ~~((fifty-five))~~ 55 with ~~((ten))~~ 10 years of state service.

(2) The employee or the school employee, at their option, must indicate the date of enrollment or deferment in PEBB retiree insurance coverage on the form. The employee or the school employee may choose from the following dates:

(a) The retirement date as stated in the formal determination letter; or

(b) The first day of the month following the date the formal determination letter was written.

**(Exception:** ~~Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive. The employee or the school employee may change health plans to a medicare advantage or medicare advantage-prescription drug plan during a special enrollment period as described in WAC 182-08-198(2).)~~

**Note:** Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(3) The director may make an exception to the date of PEBB retiree insurance coverage described in subsection (2)(a) and (b) of this section; however, such request must demonstrate extraordinary circumstances beyond the control of the retiree.

(4) Premiums and applicable premium surcharges are due from the effective date of enrollment in PEBB retiree insurance coverage.

(5) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee.

**Exception:** ~~If a retiring employee or a retiring school employee selects a medicare supplement plan or ((medicare advantage-prescription drug)) MA-PD plan, nonmedicare enrollees will be enrolled in the ((Uniform Medical Plan (UMP))) UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.~~

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-211, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-211, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-211, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-211, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-211, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-211, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-211, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-211, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-211, filed 11/17/09, effective 1/1/10; WSR 07-20-129 (Order 07-01), § 182-12-211, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and

41.05.165. WSR 04-18-039, § 182-12-211, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 21-13-101, filed 6/18/21, effective 1/1/22)

**WAC 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty.** Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age (~~twenty-six~~) 26. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26A.100.

(4) Surviving spouses, state registered domestic partners, and children who are eligible for medicare must enroll in both Parts A and B of medicare.

**Note:** For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(5) The survivor (or agent acting on their behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in PEBB retiree insurance coverage as described in subsection (7) of this section. The forms must be received by the PEBB program no later than (~~one hundred eighty~~) 180 days after the later of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that

informs the survivor that they are determined to be an eligible survivor;

(c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in PEBB retiree insurance coverage may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than ~~((sixty))~~ 60 days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29th, the survivor may request health plan enrollment to begin on July 1st); or

(c) The first of the month after the date that the PEBB program receives the required forms.

**(Exception:** ~~Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).)~~

**Note:** Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums and applicable premium surcharges must be paid by the survivor as described in WAC 182-08-180 (1)(c) except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB retiree insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in PEBB retiree insurance coverage if continuously enrolled in qualifying coverage as described in WAC 182-12-205(3).

(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(6). Survivors must provide evidence that they were continuously enrolled in one or more qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) when enrolling in a PEBB health plan.

**(Exception:** ~~Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).)~~

**Note:** Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during the annual open enrollment. In addition to the annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in PEBB retiree insurance coverage if they:

(a) Do not apply to enroll or defer enrollment within the time-lines as described in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in other qualifying coverage during the deferral period, as described in subsection (7) (b) (i) of this section.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-01. WSR 21-13-101 (Admin #2021-01.01), § 182-12-250, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-250, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160 and PEBB policy resolutions. WSR 18-20-117 (Admin #2018-02), § 182-12-250, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-250, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-250, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-250, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-250, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-250, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-250, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-250, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-250, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-250, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-250, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-250, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.080. WSR 06-20-099 (Order 06-08), § 182-12-250, filed 10/3/06, effective 11/3/06. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-250, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 21-13-104, filed 6/18/21, effective 1/1/22)

**WAC 182-12-265 What options for continuing health plan enrollment are available to a surviving spouse, state registered domestic partner, or child, if an employee, a school employee, or a retiree dies?** The survivor of an eligible employee, an eligible school employee, or a retiree who meets the eligibility criteria and submits the required forms as described in subsection (1), (2), or (3) of this section is eligible to enroll or defer enrollment as a survivor under public employees benefits board (PEBB) retiree insurance coverage. If



enrolling in PEBB retiree insurance coverage, the survivor's first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than (~~forty-five~~) 45 days after the election period ends as described in subsection (1), (2), or (3) of this section. Following the survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c).

(1) An employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system. To satisfy the requirement to immediately receive a monthly retirement benefit they must begin receiving monthly benefit payments no later than (~~one hundred twenty~~) 120 days from the date of death of the employee. The required forms to enroll or defer enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after the later of the date of the employee's death or the date the survivor's PEBB insurance coverage ends.

**(Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program no later than the last day of the month prior to the month PEBB insurance coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).)

**Note:** Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

**Notes:** If a spouse, state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, they may continue health plan enrollment as described in WAC 182-12-146.  
Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employee of a participating employer group will cease at the end of the month in which the group's contract with the authority ends unless the employer group is an educational service district.  
Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an elected and full-time appointed official of the legislative and executive branches of state government is described in WAC 182-12-180.

(2) A retiree's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after the retiree's death.

(a) The retiree's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(c) If a spouse, state registered domestic partner, or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the survivor is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after the retiree's death. For a survivor to enroll in a PEBB health plan who is not enrolled due to the retiree electing to defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 or 182-12-205, the

survivor must also provide evidence of continuous enrollment in one or more qualifying coverages as described in WAC 182-12-205 (3) (a) through (e) from the most recent open enrollment for which the survivor was not enrolled in a PEBB medical plan prior to the retiree's death. A gap of (~~(thirty-one)~~) 31 days or less is allowed between the date PEBB retiree insurance coverage was deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period.

**Note:** Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employer group retiree will cease at the end of the month in which the group's contract with the authority ends unless the employer group is an educational service district.

(3) A school employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible school employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage at the time of the school employee's death, provided the employee died on or after October 1, 1993. The survivor must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW. The required forms to enroll or defer enrollment must be received by the PEBB program no later than (~~(sixty)~~) 60 days after the later of the date of the school employee's death or the date the survivor's educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends.

**(Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program no later than the last day of the month prior to the month the educational service district coverage or SEBB insurance coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

**Note:** Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(a) The school employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The school employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

**Note:** If a spouse, state registered domestic partner, or child of an eligible school employee is not eligible for a retirement benefit allowance, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, a spouse, state registered domestic partner, or child of an eligible school employee enrolled in SEBB insurance coverage may continue health plan enrollment as described in WAC 182-31-090.

(4) If premiums and applicable premium surcharges received by the HCA are sufficient as described in WAC 182-08-180 (1) (d) (ii) to maintain PEBB health plan enrollment after the employee, school employee, or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the survivor's enrollment ended due to the death of the employee, school employee, or retiree, the PEBB program will reinstate the survivor's enrollment without a gap subject to payment of premium and applicable premium surcharges.

(5) If a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the survivor.

**Exception:** If a survivor selects a medicare supplement plan or (~~(medicare advantage-prescription drug)~~) MA-PD plan, nonmedicare enrollees will be enrolled in the (~~(Uniform Medical Plan (UMP))~~) UMP Classic. If a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(6) In order to avoid duplication of group medical coverage, a survivor may defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 and 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-265, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-265, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-265, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-265, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-265, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-265, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-265, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-265, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-265, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-265, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-265, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-265, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-265, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-265, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-265, filed 8/26/04, effective 1/1/05.]

## WSR 22-10-085

## PROPOSED RULES

## HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2022-02.04—Filed May 3, 2022, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-099.

Title of Rule and Other Identifying Information: WAC 182-12-205  
May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage?

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (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 for this webinar [https://us02web.zoom.us/webinar/register/WN\\_\\_edPzYSMR9CMXCEzVIvwWw](https://us02web.zoom.us/webinar/register/WN__edPzYSMR9CMXCEzVIvwWw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 8, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1305, fax 360-586-9727, TTY telecommunication[s] relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement policy resolutions to support the PEBB program: Amended WAC 182-12-205 to implement Policy Resolution PEBB 2022-03 Medicare advantage prescription drug (MA-PD) plan enrollment during the gap months and Policy Resolution PEBB 2022-04 Deferring PEBB retiree insurance coverage when the subscriber becomes eligible for the employer contribution.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Policy Resolutions PEBB 2022-03 and 2022-04.

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: Stella Ng, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0830; and Enforcement: Jean Bui, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

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

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

May 3, 2022  
Wendy Barcus  
Rules Coordinator

## OTS-3777.1

AMENDATORY SECTION (Amending WSR 21-13-104, filed 6/18/21, effective 1/1/22)

**WAC 182-12-205 May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage?** (1) The following individuals may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage:

(a) A retiring employee or a retiring school employee;

(b) A dependent becoming eligible as a survivor; or

(c) A retiree or a survivor enrolled in PEBB retiree insurance coverage.

(2) A subscriber described in subsection (1) of this section who defers enrollment in PEBB retiree insurance coverage also defers enrollment for all eligible dependents, except as described in subsection (3)(c) of this section.

(3) A subscriber described in subsection (1) of this section who chooses to defer enrollment in PEBB retiree insurance coverage must maintain continuous enrollment in one or more qualifying coverages as described in this subsection or WAC 182-12-200. A gap of (~~thirty-one~~) 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period. A subscriber who chooses to defer enrollment, defers enrollment in PEBB medical and PEBB dental. A subscriber must be enrolled in PEBB medical to enroll in PEBB dental. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(a) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in employer-based group medical as an employee or the dependent of an employee, or such medical insurance continued under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

(b) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled as a retiree or the dependent of a retiree in a federal retiree medical plan.

(c) Beginning January 1, 2006, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109. Dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, subscribers who are not eligible for Parts A and B of medicare may defer enrollment in PEBB retiree insurance coverage when the subscriber is enrolled in exchange coverage.

(e) Beginning July 17, 2018, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

(4) To defer enrollment in PEBB retiree insurance coverage, the required forms must be submitted to the PEBB program.

(a) For a retiring employee or a retiring school employee who meets the substantive eligibility requirements as described in WAC 182-12-171(2), enrollment will be deferred the first of the month following the date their employer-paid coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB program no later than ((~~sixty~~)) 60 days after the employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) For an official leaving public office who meets the requirements as described in WAC 182-12-180(1), enrollment will be deferred the first of the month following the date the official leaves public office. The forms must be received by the PEBB program no later than ((~~sixty~~)) 60 days after the official leaves public office.

(c) For an employee or a school employee determined to be retroactively eligible for disability retirement who meets the requirements as described in WAC 182-12-211 (1)(a) through (c), enrollment will be deferred as described in WAC 182-12-211 (2) or (3). The forms and formal determination letter must be received by the PEBB program no later than ((~~sixty~~)) 60 days after the date on the determination letter.

(d) For an eligible survivor, the dependent must meet the requirements described below and the forms must be received by the PEBB program within the time described:

(i) For a survivor of an employee or a school employee who meets the requirements as described in WAC 182-12-265 (1) or (3), enrollment will be deferred the first of the month following the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends. The forms must be received by the PEBB program no later than ((~~sixty~~)) 60 days after the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or SEBB insurance coverage ends.

(ii) For a survivor of an official who meets the requirements as described in WAC 182-12-180(2), enrollment will be deferred the first of the month following the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The forms must be received by the PEBB program no later than ((~~sixty~~)) 60 days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends.

(iii) For a survivor of a retiree who meets the requirements as described in WAC 182-12-265(2), enrollment will be deferred the first of the month following the date of the retiree's death. The forms must be received by the PEBB program no later than ((~~sixty~~)) 60 days after the retiree's death.

(iv) For a survivor of an emergency service personnel killed in the line of duty who meets the requirements as described in WAC 182-12-250, enrollment will be deferred the first of the month following the later of one of the events described in WAC 182-12-250 (5)(a)

through (d). The forms must be received by the PEBB program no later than (~~one hundred eighty~~) 180 days after the later of one of the events described in WAC 182-12-250 (5) (a) through (d).

(e) For an enrolled retiree or survivor who submits the required forms to defer enrollment in PEBB retiree insurance coverage, enrollment will be deferred effective the first of the month following the date the required forms are received by the PEBB program. If the forms are received on the first day of the month, enrollment will be deferred effective that day.

**Exception:** When a subscriber or their dependent is enrolled in a medicare advantage plan (MA), then enrollment in PEBB retiree insurance coverage will be deferred effective the first of the month following the date the (~~medicare advantage~~) MA plan disenrollment form is received.

(5) A retiree who meets substantive eligibility requirements in WAC 182-12-171(2) and whose employer-paid coverage, COBRA coverage, or continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to have submitted the deferral form at that time, but must meet all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

(6) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3) (a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in one or more qualifying coverages as described in subsection (3) (a) through (e) of this section. A gap of (~~thirty-one~~) 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period:

(a) A subscriber who defers enrollment while enrolled in employer-based group medical or such medical insurance continued under COBRA coverage or continuation coverage may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their employer-based group medical or such coverage under COBRA coverage or continuation coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the employer-based group medical coverage, COBRA coverage, or continuation coverage ends.

**((Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the employer-based group medical, COBRA coverage, or continuation coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

**Note:** Enrollment in the PEBB program's MA or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) A subscriber who defers enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submit-

ting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When the federal retiree medical plan coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ~~((sixty))~~ 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

**(Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the federal retiree medical plan coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

**Note:** Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(c) A subscriber who defers enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109 may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their medicaid coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ~~((sixty))~~ 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

**(Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month medicaid coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

**Note:** Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree or survivor was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends. The required forms must be received by the PEBB program no later than the last day of the calendar year in which the medicaid coverage ends.

(d) A subscriber who defers enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day



of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When exchange coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ~~((sixty))~~ 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

**(Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month exchange coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

**Note:** Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(e) A subscriber who defers enrollment while enrolled in CHAMPVA will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When CHAMPVA coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ~~((sixty))~~ 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after CHAMPVA coverage ends.

**(Exception:** Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month CHAMPVA coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

**Note:** Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(7) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3) (a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan if they receive formal notice that the authority has determined it is more cost-effective to enroll them or their eligible dependents in PEBB medical than a medical assistance program.

(8) If a subscriber elects to enroll a dependent in PEBB health plan coverage as described in subsection (6) or (7) of this section, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the subscriber.

**Exception:** If a subscriber selects a medicare supplement plan or ~~((medicare advantage-prescription drug))~~ MA-PD plan, nonmedicare enrollees will be enrolled in the ~~((Uniform Medical Plan (UMP)))~~ UMP Classic. If a subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(9) An enrolled retiree or a survivor who requests to voluntarily terminate their enrollment in PEBB retiree insurance coverage must do so in writing. The written termination request must be received by the PEBB program. A retiree or a survivor who voluntarily terminates their enrollment in a PEBB health plan also terminates enrollment for all eligible dependents. Once coverage is terminated, a retiree or a survivor may not enroll again in the future unless they reestablish eligibility for PEBB insurance coverage by becoming newly eligible. En-

rollment in a PEBB health plan will terminate on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, enrollment will terminate on the last day of the previous month.

**Exception:** When a subscriber or their dependent is enrolled in a ((medicare advantage)) MA plan, then enrollment will terminate on the last day of the month when the ((medicare advantage)) MA plan disenrollment form is received.

(10) When a retiree becomes eligible for the employer contribution toward PEBB benefits, PEBB retiree insurance coverage will be automatically deferred. The subscriber will be exempt from the deferral form requirement. When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they must enroll or defer PEBB retiree insurance coverage as described in WAC 182-12-171, 182-12-200, and this section.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-205, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-205, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-205, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-205, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-205, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-205, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-205, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-205, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-205, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-205, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-205, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-205, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-205, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-205, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-12-205, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-205, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-205, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-205, filed 8/26/04, effective 1/1/05.]

**WSR 22-10-087**  
**PROPOSED RULES**  
**BOARD OF REGISTRATION**  
**FOR PROFESSIONAL ENGINEERS**  
**AND LAND SURVEYORS**

[Filed May 3, 2022, 2:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-107.

Title of Rule and Other Identifying Information: Chapter 196-12 WAC, Registered professional engineers.

Hearing Location(s): On June 8, 2022, at 1:00 p.m., at Board of Registration for Professional Engineers and Land Surveyors Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or join WebEx meeting, Meeting number (access code) 2467 858 4208, Meeting password: diYfpGWP622; join by phone +1-415-655-0001 United States Toll, +1-206-207-1700 United States Toll (Seattle). The board of registration for professional engineers and land surveyors will be holding this hearing in-person at the board's offices in Olympia.

The public may also participate in the hearing virtually by accessing the hearing link on the board's rule-making page <https://brpels.wa.gov/about-us/laws-and-rules/rulemaking-activity> or calling the phone number provided.

Date of Intended Adoption: June 23, 2022.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email [Shanan.Gillespie@brpels.wa.gov](mailto:Shanan.Gillespie@brpels.wa.gov), by June 8, 2022.

Assistance for Persons with Disabilities: Contact Shanan Gillespie, phone 360-664-1570, TTY 711 or 1-800-833-5388, email [Shanan.Gillespie@brpels.wa.gov](mailto:Shanan.Gillespie@brpels.wa.gov), by June 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to chapter 196-12 WAC, Professional engineers, are necessary due to updates to chapter 18.43 RCW in 2019, and to clarify the processes and requirements for licensure as a professional engineer in Washington. This rule change will impact all applicants applying for licensure as a professional engineer or structural engineer in Washington, but they will have no additional costs to implement and comply.

Reasons Supporting Proposal: The amendments, and new sections, better define the requirements for licensure, the different ways an applicant can apply for licensure, and allows more flexibility to the board to consider different types of education and experience that do not follow the "normal" path to licensure.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: RCW 18.43.040.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-968-4805.

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 board is not one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5) (a).

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.

May 3, 2022  
Ken Fuller  
Director

### OTS-3207.3

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

**WAC 196-12-005 Declaration and purpose.** This chapter contains rules and procedures for applications, examinations, experience, education, and eligibility (~~and examinations~~) to ~~((be))~~ become licensed as professional engineers.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-12-005, filed 1/21/04, effective 2/21/04.]

AMENDATORY SECTION (Amending WSR 18-10-085, filed 5/1/18, effective 6/1/18)

**WAC 196-12-010 ((Registration)) Licensure requirements for all applicants—Initial licensure and licensed in another jurisdiction.** To become licensed as a professional engineer in the state of Washington, whether you are applying for an initial license or you possess a license in another jurisdiction, you must meet the requirements for experience and examinations described below, which need not be completed within the state of Washington:

(1) **Experience:** Have eight years of experience in engineering work of a character satisfactory to the board:

(a) The eight years ~~((of experience))~~ may be a combination of education and ~~((practical))~~ work experience. ~~((Under selected circumstances a maximum of five years of education (baccalaureate and master's degrees in engineering) can be granted toward the eight-year requirement;))~~

(b) The eight years of experience must be broad based ~~((r))~~ and progressive ~~((experience))~~ to include gaining knowledge and comprehension of engineering subjects and applying engineering principles.

(2) ~~((Receive a))~~ **Examination requirements:** An applicant must have received passing scores on two stages of examination(s). One must test the fundamentals of engineering and the other must test the principles and practice of engineering. Exam results must be independently

verified by a NCEES member board, or a board approved foreign jurisdiction.

(a) (i) **Fundamentals of engineering examination** must meet the following requirements:

(ii) The examination must be either:

(A) The National Council of Examiners for Engineering and Surveying (NCEES) fundamentals-of-engineering (FE) examination ~~(. Or, have a current license as a Canadian professional engineer (P.Eng), and having received a passing score on the Engineers Canada Professional Practice Examination (PPE);~~

~~(3) Receive a passing score on the NCEES); or~~

(B) An equivalent examination as determined by the board which tests the applicant's knowledge of appropriate fundamentals of engineering subjects including mathematics and the basic sciences as defined in RCW 18.43.040 (1) (b) (i).

(b) **Principles and practice of engineering ~~((PE))~~ examination ~~(;~~**

~~(4))~~:

The principles and practice of engineering (PE) examination must be the examination administered by NCEES.

(3) **Additional licensure requirements:**

An applicant must meet the following additional requirements for licensure:

(a) Receive a passing score on the Washington law review;

~~((5) Be of good character and reputation)~~ (b) Fully complete the application form to the satisfaction of the board; and

~~((6) Payment of)~~ (c) Pay all applicable fees.

~~((Exam results must be independently verified by the NCEES member board, or engineers Canada constituent association that granted approval to take the exam.))~~

[Statutory Authority: RCW 18.43.035. WSR 18-10-085, § 196-12-010, filed 5/1/18, effective 6/1/18; WSR 15-08-064, § 196-12-010, filed 3/27/15, effective 4/30/15; WSR 14-07-106, § 196-12-010, filed 3/19/14, effective 4/19/14; WSR 08-11-100, § 196-12-010, filed 5/20/08, effective 7/1/08. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-12-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. WSR 98-12-052, § 196-12-010, filed 5/29/98, effective 7/1/98; WSR 88-12-044 (Order PM 738), § 196-12-010, filed 5/27/88; WSR 87-13-005 (Order PM 606), § 196-12-010, filed 6/4/87; WSR 84-04-027 (Order PL 454), § 196-12-010, filed 1/25/84; WSR 82-01-064 (Order 81-10), § 196-12-010, filed 12/18/81; Order PL 224, § 196-12-010, filed 11/5/75; Order PL-129, § 196-12-010, filed 7/27/72; Order 11, § 196-12-010, filed 9/12/68; Rule IIA, filed 11/15/65; Rule IIA, filed 8/4/64; Rule IA, filed 12/26/62.]

## NEW SECTION

**WAC 196-12-013 FE examination application. (1) ABET accredited degree applicants.** For those who have attended ABET accredited degree programs and now have reached senior standing, applications to take the FE examination may be completed online directly with NCEES. Applicants should list the state of Washington as their licensing state.

(2) **All other applicants.** Those who do not meet the requirements of subsection (1) of this section must fill out the FE exam applica-

tion provided on the board website, <https://brpels.wa.gov/>, demonstrate they meet the requirements, provide required documentation, and be approved by the board to take the examination.

Further details on education experience records are provided under WAC 196-12-021.

[]

#### NEW SECTION

**WAC 196-12-014 PE licensure application form.** The board has a single application form for PE licensure in the state of Washington. This application form must be used by all applicants including those applying for the PE exam and licensure concurrently, those who have already taken the PE examination in another jurisdiction but have not obtained their initial license, and those who are already licensed in another jurisdiction and are seeking a license in Washington state.

(1) **Current PE examination and licensure applications:** Applicants who have not taken the PE examination will apply for both the PE examination and licensure on the application form. In order to be approved by the board to take the PE examination, the applicant must complete all sections of the form, except the date and location of taking the PE exam, and must otherwise meet all of the qualifications for licensure. Upon passing the PE examination, the applicant is also qualified for licensure.

Applications for PE examination and licensure must be received at the board's address with the applicable fee by the date posted on the board's website.

(2) **All other applicants for PE licensure in Washington state.** All other applicants applying for licensure in the state of Washington, including those who are licensed in another jurisdiction or have passed the Principles & Practices of engineering examination but have not obtained their initial license, must complete all sections of the application form provided by the board.

(a) All applicants must provide information on the application form that demonstrates they meet all requirements for licensure. This includes work experience requirements, education requirements, and examination requirements as detailed in WAC 196-12-010, 196-12-020, and 196-12-021; and RCW 18.43.040.

(b) All applicants must provide the following documents to verify these requirements:

(i) Education experience records - Official transcripts or the equivalent, showing all grades and degrees.

(ii) Work experience records - Completed form titled "Professional Engineering Experience Verification" which includes not only work experience information and details but also verifications of work experience by supervisors or other verifiers.

(iii) Verification of licensing in any other jurisdiction(s), if any.

(iv) Verification of passing the FE examination or its equivalent (if any) and verification of passing the PE examination.

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AMENDATORY SECTION (Amending WSR 08-11-100, filed 5/20/08, effective 7/1/08)

**WAC 196-12-020 Work experience records.** The following criteria will be used in evaluating an applicant's experience record:

(1) Work experience will be approved based on a demonstration of competency and progressive responsibility in the analysis, synthesis and evaluation of engineering concepts and data, under the direct supervision of a person authorized by chapter 18.43 RCW or other applicable statute to practice engineering. Under the general guidance and direct supervision of an authorized professional, the applicant must be in a position of making independent judgments and decisions in the following experience areas:

- (a) Formulating conclusions and recommendations;
- (b) Identifying design and/or project objectives;
- (c) Identifying possible alternative methods and concepts;
- (d) Defining performance specifications and functional requirements;
- (e) Solving engineering problems;
- (f) Interacting with allied professionals (~~((from other areas of practice))~~);
- (g) Effectively communicating recommendations and conclusions;
- (h) Demonstrating an understanding and concern for energy/environmental considerations, socioeconomic impact, and sustainability of resources.

(2) ~~((The branch of structural engineering requires specialized work experience to protect the public safety. To be eligible to take the structural license examination, an applicant must have at least two years of progressive responsibility in structural engineering experience. These two years of structural experience are in addition to the eight years of engineering experience required to be registered as a professional engineer and must be documented in the application in accordance with subsection (1) of this section. The structural engineering experience must be supervised by a licensed professional engineer in the branch of structural engineering or a licensed professional engineer with substantial structural engineering work experience.~~

~~(3))~~ Engineering teaching may be considered satisfactory experience up to a maximum of two years at the discretion of the board.

~~((4))~~ (3) Applied research is considered satisfactory experience when it meets the following conditions:

(a) The research must be conducted under the guidance or supervision of a ~~((licensed))~~ professional engineer. For the purposes of this subsection, guidance or supervision means being cognizant of all applicable aspects of the work and a reviewer of all applicable reporting documentation.

(b) The principal result(s) of the research are in a published report or a recognized engineering journal article in which the applicant is the ~~((first))~~ primary author or the work is adequately documented and available to the board upon request.

~~((5))~~ (4) For military engineering experience to be considered acceptable, it should be similar to engineering experience that would be gained in a nonmilitary environment as defined in subsection (1) of this section, and such experience must be verified.

~~((6-Any))~~ (5) All work experience gained ~~((without))~~ must be under the direct supervision of a professional engineer authorized to practice under chapter 18.43 RCW or an individual authorized by another statute to practice engineering ~~((, or any work experience gained in~~

~~any other situation which violates the provisions of chapters 18.43 and 18.235 RCW or Title 196 WAC will not be counted toward the statutory experience requirement)).~~

[Statutory Authority: RCW 18.43.035. WSR 08-11-100, § 196-12-020, filed 5/20/08, effective 7/1/08. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-12-020, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. WSR 02-01-071, § 196-12-020, filed 12/14/01, effective 1/30/02; WSR 98-12-052, § 196-12-020, filed 5/29/98, effective 7/1/98; WSR 92-01-101, § 196-12-020, filed 12/17/91, effective 1/17/92; WSR 87-13-005 (Order PM 606), § 196-12-020, filed 6/4/87; WSR 84-04-027 (Order PL 454), § 196-12-020, filed 1/25/84; WSR 82-01-064 (Order 81-10), § 196-12-020, filed 12/18/81; Order PL-115, § 196-12-020, filed 11/24/71; Rule IIB, filed 11/15/65; Rule IIB, filed 5/26/65; Rule IIB, filed 8/4/64; Rule IB, filed 12/26/62.]

AMENDATORY SECTION (Amending WSR 14-07-106, filed 3/19/14, effective 4/19/14)

**WAC 196-12-021 Education experience records.** Official transcripts must be sent to the board's office for ~~((full education experience credit))~~ review and approval.

(1) A baccalaureate degree in engineering in a program accredited by ~~((the engineering accreditation commission (EAC) of))~~ the accreditation board for engineering and technology (ABET) is equivalent to four years of required experience. Satisfactory completion of each year of such an approved program is equivalent to one year of experience.

(2) ~~((A baccalaureate degree in an engineering technology program accredited by the technology accreditation commission (TAC) of ABET, is equivalent to three years of required experience. Satisfactory completion of each year of such an approved program is equivalent to three-fourths of one year of experience.~~

~~(3) An approved four years in))~~ A degree in engineering from a non-ABET accredited engineering program ((will)) may be given ((a maximum of three)) four years at the discretion of the board. The board will determine if the degree is satisfactory to the board to award years of experience.

~~((4))~~ (3) No more than one year may be granted for postgraduate engineering courses ~~((for those applicants having earned degrees in accordance with subsections (1), (2), or (3) of this section)).~~

~~((5))~~ (4) A baccalaureate degree in a nonengineering program will be given a maximum of two years of experience.

~~((If the degree is followed by a graduate degree in engineering from a school that has an ABET accredited undergraduate program in the same discipline as the graduate degree, a maximum of four years of experience may be granted for this combination of education.~~

~~(6))~~ (5) An associate degree in engineering from an approved program may be equivalent for up to two years of experience.

~~((7) Education gained over time where no degree is conferred will be granted no more than two years of experience. For the purpose of this subsection, education over time means:))~~ (6) Sporadic engineering related education may be considered as experience by the board at its discretion. For example, one or two engineering classes taken



at a time, often at different schools; ~~((seminars; workshops; and))~~ and/or classes taken through industry ~~((and))~~ or the military may count as experience. In ~~((order to determine the appropriate amount of experience,))~~ evaluating this type of education, the board will ~~((be compared))~~ compare the courses taken to college coursework in a baccalaureate of engineering ~~((technology))~~ degree program.

~~((8))~~ The board may approve engineering degree programs from other countries.)

(a) A number of foreign degree programs are included in mutual recognition agreements entered into by ABET with other accrediting authorities. Applicants with a degree from one of these programs will be evaluated ~~((in accordance with subsections (1) and (2) of this section))~~ by the board.

(b) Applicants having engineering degrees from programs in countries that are not ABET accredited will be required to have their transcripts evaluated by a transcript evaluation service approved by the board. This evaluation will be performed at the applicant's expense, and the applicant will be responsible for submitting all necessary information to the evaluation service. The board will use the evaluation to determine if the foreign degree is ~~((equivalent to an ABET accredited degree. If the board determines that the degree is equivalent, experience will be granted in accordance with subsection (1) or (2) of this section. If the board determines that the foreign degree is not equivalent to an ABET accredited degree, then a maximum of three years of experience will be granted in accordance with subsection (3) of this section))~~ satisfactory to the board to award years of experience.

(c) An applicant with an undergraduate degree from a foreign program that is not ABET accredited, can waive the requirement for a degree evaluation if they have a graduate degree in engineering from a school that has an ABET accredited undergraduate engineering degree program in the same discipline as the graduate degree. ~~((No more than four))~~ Years of experience will be ~~((granted for this combination of education))~~ determined at the discretion of the board.

~~((9))~~ (7) Any other education ~~((will))~~ may be taken into account and evaluated on its merits by the board.

~~((10))~~ (8) Work experience gained between semesters or quarters or during summers while enrolled in an approved curriculum ~~((will be considered part of the educational process. No more than one year of experience will be granted for one calendar year))~~ may be counted as experience at the discretion of the board.

[Statutory Authority: RCW 18.43.035. WSR 14-07-106, § 196-12-021, filed 3/19/14, effective 4/19/14; WSR 08-11-100, § 196-12-021, filed 5/20/08, effective 7/1/08.]

AMENDATORY SECTION (Amending WSR 14-07-106, filed 3/19/14, effective 4/19/14)

**WAC 196-12-030 ((Principles and practice)) Additional branches of engineering ((examination))**. ~~((The principles and practice of engineering examination is given at times and places as approved by the board.))~~ A professional engineer with a current registration in the state of Washington that is seeking to become licensed in an addition-

al branch of engineering must pass the principles and practice examination for that additional branch.

[Statutory Authority: RCW 18.43.035. WSR 14-07-106, § 196-12-030, filed 3/19/14, effective 4/19/14; WSR 08-11-100, § 196-12-030, filed 5/20/08, effective 7/1/08. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-12-030, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. WSR 02-01-071, § 196-12-030, filed 12/14/01, effective 1/30/02; WSR 01-09-016, § 196-12-030, filed 4/6/01, effective 5/7/01; WSR 98-12-052, § 196-12-030, filed 5/29/98, effective 7/1/98; WSR 93-01-081, § 196-12-030, filed 12/15/92, effective 1/15/93; WSR 84-04-027 (Order PL 454), § 196-12-030, filed 1/25/84; WSR 82-01-064 (Order 81-10), § 196-12-030, filed 12/18/81; Order PL-129, § 196-12-030, filed 7/27/72; Order PL-115, § 196-12-030, filed 11/24/71; Order 11, § 196-12-030, filed 9/12/68; Rule IIC, filed 11/15/65, 8/4/64; Rule IC, filed 12/26/62.]

AMENDATORY SECTION (Amending WSR 18-10-085, filed 5/1/18, effective 6/1/18)

**WAC 196-12-045 Registration of applicants licensed in other jurisdictions.** Licenses may be issued only in the branches of engineering (~~offered~~) currently recognized by the board. The board has discretion to issue a license to an out-of-state licensee who meets the following requirements:

(1) Completes (~~an~~) the application (~~on forms~~) form provided by the board including supporting documentation, as listed in WAC 196-12-010, 196-12-014, 196-12-020, 196-12-021, and pays the appropriate fee;

(2) Holds a currently valid license in a board recognized licensing jurisdiction in a state, territory, possession, district, or foreign country; and

(3) Meets minimum requirements for licensure as determined by the board under WAC 196-12-010 and 196-12-014, including testing that adequately measures the fundamentals of engineering and principles and practice of engineering.

[Statutory Authority: RCW 18.43.035. WSR 18-10-085, § 196-12-045, filed 5/1/18, effective 6/1/18; WSR 08-11-100, § 196-12-045, filed 5/20/08, effective 7/1/08. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-12-045, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. WSR 98-12-052, § 196-12-045, filed 5/29/98, effective 7/1/98.]

AMENDATORY SECTION (Amending WSR 18-10-085, filed 5/1/18, effective 6/1/18)

**WAC 196-12-047 Structural licensing requirements.** The branch of structural engineering requires specialized work experience to protect the public health, safety, and welfare. To be licensed as a structural engineer, an applicant must:

- (1) Be currently licensed as a professional engineer in Washington state;
- (2) Have at least two years of progressive responsibility in structural engineering experience in addition to the eight years of engineering experience required to be registered as a professional engineer. The structural experience should:
  - (a) Demonstrate the applicant's ability to design building structures or nonbuilding structures integrated within "significant structures" as defined in RCW 18.43.020 (~~((11) and located in International Building Code (IBC) Seismic Design Category D or above)~~) (12);
  - (b) Be progressive in difficulty and magnitude;
  - (c) Demonstrate breadth and depth of seismic design (~~(subject matter)~~) and detailing experience for projects in seismic regions similar to those located in Washington state;
  - (d) Incorporate two of the four common construction materials (steel, concrete, wood, and masonry);
  - (e) Reflect ability to design and apply structural engineering principles that show sound judgment on projects involving public health, safety, and welfare;
  - (f) Be supervised by a licensed professional engineer in the branch of structural engineering or a licensed professional engineer with substantial structural engineering work experience for projects in seismic regions similar to those located in Washington state; and
- (3) Pass a board approved structural exam.

[Statutory Authority: RCW 18.43.035. WSR 18-10-085, § 196-12-047, filed 5/1/18, effective 6/1/18.]

AMENDATORY SECTION (Amending WSR 08-11-100, filed 5/20/08, effective 7/1/08)

**WAC 196-12-055 Permit for temporary practice.** Any nonresident engineer who intends to practice engineering in the state of Washington on a temporary basis must provide the board with the following before starting any work:

- (1) A completed application with applicable fees.
- (2) Dates work is to be started.
- (3) Name and address of client.
- (4) Description and location (address) of project.
- (5) Name and contact information for local permitting authority.

Plans, specifications, and reports prepared by the nonresident engineer must be signed, dated, and stamped with their professional seal. A copy of the permit issued by this board shall be attached to the engineering documents submitted for approval or building permit.

[Statutory Authority: RCW 18.43.035. WSR 08-11-100, § 196-12-055, filed 5/20/08, effective 7/1/08. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-12-055, filed 1/21/04, effective 2/21/04.]

AMENDATORY SECTION (Amending WSR 08-11-100, filed 5/20/08, effective 7/1/08)

**WAC 196-12-065 Retired status.** A professional engineer having reached the age of ((~~sixty-five~~)) 65 and having discontinued active practice as a professional engineer may be eligible for retired status. "Active practice" is defined as exercising direct supervision and control over any professional engineering activity as defined in RCW 18.43.020(5).

(1) Request for retired status. Upon approval, a request for retired status will be granted effective the next scheduled renewal date.

(2) A licensee on retired status may:

(a) Retain the board issued wall certificate of registration;

(b) Use the title "retired professional engineer" or "PE-retired" or "SE-retired" as appropriate;

(c) Work as an engineer in a volunteer capacity, provided that the retired licensee does not create an engineering document or use their seal;

(d) Provide experience verifications and references for persons seeking registration;

(e) Serve as an instructor for engineering related courses;

(f) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to engineering work performed by the licensee;

(g) Serve in a function that supports the principles of registration and/or promotes the profession of engineering, such as members of commissions, boards or committees;

(h) Serve in an engineering capacity as a "good samaritan." The state laws governing such activity are RCW 38.52.195 and 38.52.1951 and chapter 18.43 RCW.

(3) A licensee on retired status must not:

(a) Perform any engineering activity, as provided for in RCW 18.43.020(5), unless the activity is under the direct supervision of a licensed professional engineer with an active registration in Washington;

(b) Act as the designated engineer for a corporation or limited liability company;

(c) Apply their professional engineers seal to any plan, specification, ((~~plat~~)) or report.

(4) Certificate of registration reinstatement. A retired licensee may resume active engineering practice with payment of the current renewal fee.

(5) Exemptions. A licensee is not eligible for retired status if their license to practice is under board ordered sanction. This exemption exists until the sanctions have been lifted or satisfied by the board.

[Statutory Authority: RCW 18.43.035. WSR 08-11-100, § 196-12-065, filed 5/20/08, effective 7/1/08. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-12-065, filed 1/21/04, effective 2/21/04.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 196-12-011            Application requirements.
- WAC 196-12-012            Reexamination requirements.

**WSR 22-10-089**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
[Filed May 3, 2022, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-096.

Title of Rule and Other Identifying Information: WAC 182-513-1350  
Defining the resource standard and determining resource eligibility  
for SSI-related long-term care services.

Hearing Location(s): On June 7, 2022, at 10:00 a.m. In response  
to the coronavirus disease 2019 (COVID-19) public health emergency,  
the health care authority (HCA) continues to hold public hearings vir-  
tually without a physical meeting place. This promotes social distanc-  
ing and the safety of the residents of Washington state.

To attend the virtual public hearing, you must register in ad-  
vance [https://us02web.zoom.us/webinar/register/  
WN\\_\\_edPzYSMR9CMXCEzVivWw](https://us02web.zoom.us/webinar/register/WN__edPzYSMR9CMXCEzVivWw). After registering, you will receive a con-  
firmation email containing information about joining the public hear-  
ing.

Date of Intended Adoption: Not sooner than June 8, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box  
42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727,  
by June 7, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coor-  
dinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s]  
relay service 711, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including  
Any Changes in Existing Rules: The agency is increasing the excess  
equity amount allowed for homeowners who are eligible for apple health  
long-term services and supports (LTSS) benefits to the maximum amount  
allowed under federal law.

Reasons Supporting Proposal: State property values have increased  
substantially during the last several years. This amendment would al-  
low more homeowners who are otherwise eligible for LTSS benefits to  
receive them.

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 Lan-  
guage, Implementation, Enforcement, and Fiscal Matters: Not applica-  
ble.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud,  
P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation  
and Enforcement: Paige Lewis, P.O. Box 45534, Olympia, WA 98504-5534,  
360-725-0757.

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

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

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

May 3, 2022  
Wendy Barcus  
Rules Coordinator

**OTS-3704.2**

AMENDATORY SECTION (Amending WSR 17-18-023, filed 8/28/17, effective 9/28/17)

**WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services.****(1) General information.**

(a) This section describes how the agency or ((its)) the agency's designee defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related long-term care (LTC) services.

(b) "Resource standard" means the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not SSI-related, the agency applies program specific resource rules to determine eligibility.

**(2) Resource standards.**

(a) The resource standard for the following people is \$2000:

(i) A single person; or

(ii) An institutionalized spouse.

(b) The resource standard for a legally married couple is \$3000, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

**(3) Availability of resources.**

(a) General. The agency or ((its)) the agency's designee applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

**(b) Married couples.**

(i) When both spouses apply for LTC services, the resources of both spouses are available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency or ((its)) the agency's designee determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency or ((its)) the agency's designee has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the in-

stitutionalized spouse, then the agency applies the standard under subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for the couple.

(iv) The resources of the community spouse are unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized individual marries, the agency or (~~its~~) the agency's designee redetermines eligibility applying the resource and income rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least (~~thir-~~~~ty~~) 30 consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, and WAC 182-513-1355 (2)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (3) or (5), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) A reasonable amount of time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency or (~~its~~) the agency's designee determines countable resources using the following sections:

(i) WAC 182-512-0200 SSI-related medical—Definition of resources.

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources.

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(iv) WAC 182-512-0300 SSI-related medical—Resources eligibility.

(v) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(vi) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(vii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(viii) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(ix) Chapter 182-516 WAC, Trusts, annuities, life estates, and promissory notes—Effect on medical programs.

(b) The agency or (~~its~~) the agency's designee determines excluded resources based on federal law and WAC 182-512-0550, except:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) For long-term services and supports (LTSS), based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, one home is excluded only if it meets the home equity limits of subsection (8) of this section. See WAC 182-512-0350 (1)(b).

(c) The agency or (~~its~~) the agency's designee adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv)



apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce excess resources by deducting incurred medical expenses under subsection (6) of this section;

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) In a medical institution, excess resources and available income must be under the state medicaid rate based on the number of days the person spent in the medical institution in the month.

(B) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(c) Excess resources not otherwise applied to medical expenses will be applied to the projected cost of care for services in a medical institution under WAC 182-513-1380.

(6) Allowable medical expenses.

(a) The following incurred medical expenses may be used to reduce excess resources:

(i) Premiums, deductibles, coinsurance, or copayment charges for health insurance and medicare;

(ii) Medically necessary care defined under WAC 182-500-0070, but not covered under the state's medicaid plan. Information regarding covered services is under chapter 182-501 WAC;

(iii) Medically necessary care defined under WAC 182-500-0070 incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that provided the services.

(b) To be allowed, the medical expense must:

(i) Have been incurred no more than three months before the month of the medicaid application;

(ii) Not be subject to third-party payment or reimbursement;

(iii) Not have been used to satisfy a previous spenddown liability;

(iv) Not have been previously used to reduce excess resources;

(v) Not have been used to reduce participation;

(vi) Not have been incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Be an amount for which the person remains liable.

(7) Nonallowable expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid adult family home (AFH) or assisted living facility expenses incurred prior to medicaid eligibility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment under chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in a primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) that are based on the need for either nursing fa-

cility level of care or intermediate care facility for the intellectually disabled level of care, unless one of the following persons lawfully resides in the home:

(i) That person's spouse; or

(ii) That person's dependent child under age (~~(twenty-one)~~) 21, blind child, or disabled child.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) (~~(Effective January 1, 2016,)~~) The excess home equity limit is (~~(\$552,000)~~) the federal maximum allowed. On (~~January 1, 2017, and on~~) January 1st of each year (~~thereafter~~), this standard may change by the percentage in the consumer price (~~index-urban-~~) index for all consumers (CPI-U). The current maximum home equity limit is posted by the Centers for Medicare and Medicaid Services. (See subsection (9) of this section for institutional resource standards.)

(d) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

(9) Institutional resource standards are found at (~~(http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources)~~) https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-18-023, § 182-513-1350, filed 8/28/17, effective 9/28/17. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1350, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as § 182-513-1350, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-513-1350, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and 74.09.575. WSR 09-12-058, § 388-513-1350, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530. WSR 08-13-072, § 388-513-1350, filed 6/16/08, effective 7/17/08. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, and 74.09.530. WSR 07-19-128, § 388-513-1350, filed 9/19/07, effective 10/20/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575, 2005 Federal Deficit Reduction Act (DRA) P.L. 109-171, and Section 1924 of the Social Security Act (42 U.S.C. 1396r-5). WSR 07-01-073, § 388-513-1350, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 05-07-033, § 388-513-1350, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.575; 2003 1st sp.s. c 28, and section 1924 of the Social Security Act (42 U.S.C. 1396R-5). WSR 04-04-072, § 388-513-1350, filed 2/2/04, effective 3/4/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924 (42 U.S.C. 1396R-5). WSR 01-18-055, § 388-513-1350, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 11.92.180, 43.20B.460, 48.85.020, 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.[09.]575, 74.09.585; 20 C.F.R. 416.1110-1112, 1123 and 1160; 42 C.F.R. 435.403 (j) (2) and 1005; and Sections 17, 1915(c), and 1924 (42 U.S.C. 1396) of the Social Security Act. WSR 00-01-051, § 388-513-1350, filed 12/8/99, effective 1/8/00. Statutory Authority:

RCW 74.08.090 and 74.09.500. WSR 99-06-045, § 388-513-1350, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.575 and Section 1924 (42 U.S.C. 1396r-5). WSR 98-11-033, § 388-513-1350, filed 5/14/98, effective 6/14/98. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090 and 74.09.575. WSR 97-09-112, § 388-513-1350, filed 4/23/97, effective 5/24/97. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44. WSR 96-09-033 (Order 3963), § 388-513-1350, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. WSR 95-05-022 (Order 3832), § 388-513-1350, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. WSR 94-23-129 (Order 3808), § 388-513-1350, filed 11/23/94, effective 12/24/94; WSR 94-10-065 (Order 3732), § 388-513-1350, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-95-337 and 388-95-340.]

## WSR 22-10-091

## PROPOSED RULES

## THE EVERGREEN STATE COLLEGE

[Filed May 3, 2022, 4:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-078.

Title of Rule and Other Identifying Information: Public records, chapter 174-276 WAC.

Hearing Location(s): On Wednesday, June 15, 2022, at 10:00 a.m., via Zoom <https://evergreen.zoom.us/j/81321130006>. Hearing will be conducted virtually via Zoom due to COVID-19 protocols. Any person interested in providing comments must either attend the virtual session, or provide written comment to Kate MacKinnon at [mackinnk@evergreen.edu](mailto:mackinnk@evergreen.edu). Comments must be received prior to the hearing on June 15.

Date of Intended Adoption: June 16, 2022.

Submit Written Comments to: Kate MacKinnon, 2700 Evergreen Parkway N.W., L3200, Olympia, WA 98505, email [mackinnk@evergreen.edu](mailto:mackinnk@evergreen.edu), phone 360-867-6914, by June 15, 2022.

Assistance for Persons with Disabilities: Contact access services, The Evergreen State College, phone 360-867-6384, email [accessservices@evergreen.edu](mailto:accessservices@evergreen.edu), by June 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) To bring chapter 174-276 WAC up-to-date and into compliance with current public records law; (2) to bring the college's public records procedures into alignment with current practices at other educational institutions; and (3) to improve service to requesters via updated rules and procedures that make use of the current tools available to the college's public records staff.

Reasons Supporting Proposal: By the date of the hearing, the college's current chapter 174-276 WAC will be over 25 years old. It does not reflect current standard practices or procedures at similar institutions. The proposed changes would help increase our efficiency and provide clear expectations of our service to customers, as well as help align our public records rules with the practices in place at other agencies and institutions.

Statutory Authority for Adoption: RCW 28B.40.120.

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: The Evergreen State College, business services, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kate MacKinnon, The Evergreen State College, Olympia Campus, 360-867-6914.

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 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.

May 3, 2022

Daniel B. Ralph  
Rules Coordinator

**OTS-3782.1**

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-005 Purpose.** The purpose of this chapter is to provide ~~((rules))~~ for public access to existing, identifiable, nonexempt public records of The Evergreen State College ((implementation of the provisions of chapter 42.17 RCW relating to public records)) in accordance with the Public Records Act, chapter 42.56 RCW.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-005, filed 6/13/97, effective 7/14/97.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-010 Definitions ((of public record)).** ~~((1) A public record includes 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 Evergreen State College, regardless of the physical form or characteristics.~~

~~((2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.))~~ (1) **Public record.** The term "public record" and other terms defined in the Public Records Act shall have the same meaning in this chapter that they have under the Public Records Act.

(2) **Public Records Act.** References in this chapter to the "Public Records Act" are to chapter 42.56 RCW.

(3) **Requestor.** A "requestor" is any person or entity requesting public records of The Evergreen State College pursuant to the Public Records Act.

(4) **College.** The term "college" means The Evergreen State College.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-010, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-010, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 90-04-011, filed 1/26/90, effective 2/26/90)

**WAC 174-276-030** (~~((Informal procedures regarding the general course and methods of decision.))~~) **Description of the college.** ((Informal procedures regarding the methods and general course of operations at the college are, for the purposes of these rules, either:

(1) Decisions made by persons authorized by board resolution, the president, or any designee to make a decision within the scope of responsibility assigned to such person; or

(2) Methods of human persuasion utilized by any member of the college's constituencies or of the public to attempt to influence one in power to make decisions within that person's scope of responsibility.))

(1) **Mission - Governance.** The college is a public institution of higher education, established under chapter 28B.40 RCW as a state college. The college is governed by a board of trustees appointed by the governor. The board appoints a president who serves as the chief executive officer responsible for the administration of the college.

(2) **College campus.** The campus of the college is located at 2700 Evergreen Parkway N.W., Olympia, WA 98505. The college is located within Thurston County. The college operates the Tacoma Program at 1210 6th Ave, Tacoma, WA 98405.

(3) **Policies and procedures.** College policies meeting the definition of a "rule" under the Administrative Procedure Act, chapter 34.05 RCW are adopted by the board of trustees or designees and published in Title 174 of the Washington Administrative Code (WAC). Other college policies approved by the administration are published in college policies and procedures manuals.

(4) **Documents index.** As an institution of higher education, the college generally does not have occasion to issue nonexempt "final orders," "declaratory orders," "interpretive statements," or "policy statements" as those terms are defined and used in the Public Records Act. Should the college possess such records, an index of final orders, declaratory orders, interpretive statements, and policy statements, entered after June 30, 1990, shall be available at the office of the public records officer. The secretary of the college's board of trustees does maintain and publish on the college website a document index of the board's approved meeting agendas and minutes. Inquiries may be directed to the secretary of the board in the office of the college president.

(5) **College website.** The college's official website, available at [www.evergreen.edu](http://www.evergreen.edu), provides general information about the college and its governing board, administration, educational programs, and policies and procedures. Persons seeking public records of the college are encouraged to view the records available on the website prior to submitting a records request.

[Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-030, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-040** (~~((Designation of))~~) **Public records officer(s).**  
 ((The public records officer for the college shall be the executive

~~associate to the president or the president's designee within the office of the president. The public records officer shall be responsible for insuring full public access to public records in accordance with chapter 42.17 RCW. The public records officer shall enforce the rules and regulations related to release of public records and coordinate such with the faculty, staff, and students of the college.)~~ (1) **Designation.** A public records officer designated by the college shall be responsible for responding to public records requests in accordance with the provisions of this chapter and applicable provisions of the Public Records Act, chapter 42.56 RCW. The duties of the public records officer under this chapter may be delegated to one or more public records assistants designated by the college.

(2) **Duties.** The public records officer shall oversee the college's compliance with the Public Records Act. The records officer (or designee) and the college are responsible for providing the fullest assistance to requestors of public records, for ensuring that public records are protected from damage or disorganization, and for preventing records requests from excessively interfering with essential institutional functions or unreasonably disrupting the operations of the college. The college may take reasonable precautions to prevent a requestor from being unreasonably disruptive or disrespectful to college staff.

(3) **Records office.** Inquiries regarding public records of the college may be addressed to the public records officer at the following office address:

Public Records Officer  
The Evergreen State College  
2700 Evergreen Parkway N.W., Library 3200  
Olympia, WA 98505  
360-867-6914  
publicrecords@evergreen.edu

(4) **Office hours.** The regular office hours of the public records office are from 8:00 am to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays and college closures.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-040, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-040, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-050** ~~((Availability for public inspection and copying of))~~ **Requests for public records.** ~~((Public records shall be available for inspection and copying during the customary office hours of the college. For the purposes of this chapter, the customary office hours shall be from 9 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, unless the person making the request and the college, acting through the public records officer, agree on a different time.))~~ (1) **Written requests preferred.** Requests for public records of the college may be addressed to the public records officer at the address given in WAC 174-276-040. The college encourages, but does not require, requestors to submit their request via email or by

using the form made available on the college website (www.evergreen.edu/publicrecords). Requests made orally, whether by phone or in person, may be confirmed in writing by the public records officer or designee.

(2) **Contents of records requests.** A request for public records must include the following information:

(a) The name and contact information of the person requesting public records;

(b) The requestor's mailing address or email address;

(c) The date and time of the request;

(d) A description of the requested records that is sufficiently detailed to enable the public records officer and records custodians to identify and locate the responsive records;

(e) A statement indicating whether the requestor wishes to inspect the records or to receive copies of the records, and if copies are requested, the preferred format for receipt of the records (e.g., paper or electronic, and if electronic, pdf or other format); and

(f) A statement indicating the requestors preferred method for receipt of responsive records (i.e., email, postal service, or pick-up).

(3) **Lists of individuals for commercial purposes.** State agencies and institutions are not permitted to provide lists of individuals for commercial purposes. A request for lists of individuals must be accompanied by the requestor's signed declaration that the list will not be used for commercial purposes. The public records officer may inquire as to the requestor's intended use of the list and may deny the request if it is evident from the request that the list will be used for commercial purpose.

(4) **Assistance in identifying records.** The public records officer may assist requestors in identifying the specific records sought by the requestor. With limited exceptions, a requestor may not be required to state the purpose of the request. However, the records officer may ask the purpose of the request if such inquiry will assist in identifying the records requested.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-050, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-050, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-060 ((Requests for)) Processing of public records requests.** ~~((In accordance with the requirements of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records are only obtainable by members of the public when those members of the public comply with the following procedures:~~

~~(1) A request shall be made in writing upon a form which shall be available at the office of the public records officer and shall be presented to the public records officer or the president's designee. Such request shall include the following:~~

~~(a) The name of the person requesting the record.~~



~~(b) The time of day and calendar date on which the request was made.~~

~~(c) If the matter requested is referenced within the current index maintained by the college records officer, a reference to the requested record as it is described in such index.~~

~~(d) If the requested matter is not identifiable by reference to the college records current index, a statement that succinctly describes the record requested.~~

~~(e) A verification that the records requested shall not be used to compile a commercial sales list.~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the college person to whom the request is being made to assist the member of the public in succinctly identifying the public record requested.)~~ (1) **Applicable law.** Requests for public records will be processed in accordance with these rules and applicable provisions of the Public Records Act, chapter 42.56 RCW. Guidance concerning the application of these rules may be found in the advisory model rules adopted by the attorney general under chapter 44-14 WAC.

(2) **Prioritizing requests.** Public records requests generally will be processed in the order in which they are received by the college's public records office, and within the staffing limitations of the office. However, the records office may expedite requests for a single record or for only a few records, if such records are easily identifiable and can be readily retrieved. The records office may ask, but not require, a requestor to prioritize the records the requestor is seeking.

(3) **Clarification of requests.** The public records officer may request clarification of a records request in accordance with applicable provisions of the Public Records Act. The requestor must respond to the request for clarification within 30 days of the request.

(4) **Providing records by installment.** If a requestor submits multiple records requests, or if a request seeks a large number of records or many different types of records, the public records office may provide access to the records in installments in accordance with applicable provisions of the Public Records Act.

(5) **Denial of bot requests.** The public records officer may deny a bot request as defined under the Public Records Act, RCW 42.56.080(3), if responding to the multiple requests would cause excessive interference with other essential functions of the college and the records officer reasonably believes the request was automatically generated by a computer program or script.

(6) **Closure of requests.** When the requestor withdraws the request, fails to respond to a request for clarification from the college within 30 days or clarify an entirely unclear request within 30 days, fails to provide signed certification that a request for records including a list of names is not for commercial purposes, or fails to fulfill the requestor's obligations to inspect records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer will close the request and notify the requestor that the request has been closed.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-060, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-060, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 90-04-011, filed 1/26/90, effective 2/26/90)

**WAC 174-276-070 ((Charges for copying.)) Records exempt from inspection or copying.** ((-1) No fee shall be charged for inspection of public records. The college may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse the college for its actual costs incident to such copying.

(2) No person shall be released a record which has been copied by photostatic process until and unless the person requesting the copied public record has tendered payment for such copying to the records official from whom the public record was obtained, or to any person designated by such records official.)) **(1) Public Records Act exemptions.** The Public Records Act, chapter 42.56 RCW, exempts from inspection or copying certain categories of records as set forth in the Public Records Act or under other statutes. The public records officer will disclose the existence of exempt records as required by law, but will deny the inspection or copying of such records to the extent that the records are exempt from inspections or copying under the Public Records Act or other applicable law.

**(2) Commonly applied exemptions.** The public records office maintains a list explaining the exemptions most commonly applied by the college in processing requests for public records. A copy of the list can be requested from the public records officer. Relevant exemptions will be provided to the requestor by the public records officer in responding to a request for records that are determined in whole or in part to be exempt from inspection or copying.

**(3) Determining applicable exemptions.** The public records officer may seek information from the requestor sufficient to determine whether another statute prohibits disclosure of the requested records. For example, student education records generally may not be disclosed to third parties without the student's written consent.

[Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-070, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-080 ((Determination regarding exempt records.)) Public records available for inspection.** ((-1) The college reserves the right to determine that a public record requested in accordance with the procedures of this chapter is exempt under the provisions of RCW 42.17.310. Such determination may be made in consultation with any of the records officers of the college, president of the college, or an assistant attorney general assigned to the college.

(2) Responses to requests for records must be made promptly. For the purpose of these rules, a prompt response occurs if the person requesting the public record is notified within five business days as to whether her or his request for a public record will be honored.

(3) No denial of a request for public records shall be valid unless accompanied by a written statement, signed by the public records officer or his or her designee, specifying the specific reasons there-

for. The following nonexhaustive lists are examples of records exempted from public inspection and copying:

~~(a) Personal information in any files maintained for students in public schools; patients or clients of public institutions or public health agencies; welfare recipients; prisoners, probationers, or parolees.~~

~~(b) Personal information in files maintained for employees, appointed or elected officials, or any public agency to the extent that disclosure would violate their right to privacy.~~

~~(c) Information required of any taxpayer in connection with the assessment or collection of any tax, if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.~~

~~(d) Specific intelligence information and specific investigative files compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.~~

~~(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement or penology agencies, except as the complainant may authorize.~~

~~(f) Test questions, scoring keys, and other examination data used to administer a license, employment or academic examination.~~

~~(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition of property, until the project is abandoned or until such time as all of the property has been acquired, but in no event shall disclosure be denied for more than three years after the appraisal.~~

~~(h) Valuable formulae, designs, drawings and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.~~

~~(i) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.~~

~~(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.~~

~~(k) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of information would:~~

~~(i) Be prohibited to such persons by RCW 82.32.330; or~~

~~(ii) Violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.~~

~~(l) Records, maps, or other information identifying the location of archeological sites in order to avoid the looting or depredation of such sites.~~

~~(m) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.~~

~~(n) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to the applicant.~~

~~(o) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers. RCW 51.36.120.~~

~~(p) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.~~

~~(q) Information that identifies a person who, while an agency employee:~~

~~(i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and~~

~~(ii) Requests his or her identity or any identifying information not be disclosed.~~

~~(r) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.~~

~~(s) Business related information protected from public inspection and copying under RCW 15.86.110.~~

~~(4) The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital government interest, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.~~

~~(5) Prior to releasing personal information regarding an identifiable person or persons, the college must notify the affected person or persons in writing and provide them with a two-week opportunity to seek an injunction through Thurston County superior court preventing the release of the document or documents in question. The affected person or persons may waive the two-week notice requirement under this section by contacting the public records officer in writing of said waiver.))~~ (1) **Scheduling of appointments.** Public records identified as responsive to a public records request may be made available for inspection and copying during regular office hours by scheduling an appointment with the public records officer. The requestor must review the assembled records or installment of records within 30 days of being notified that the records are available for review. The records officer will notify the requestor in writing of this requirement and will ask the requestor to contact the records office 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 30-day period or make other arrangements, the college may close the request.

(2) **Protection of records.** The public records officer will be responsible for providing full access to public records made available for inspection, for protecting the records from damage or disorganization, and for preventing excessive interference with essential college functions. Public records made available for inspection may not be removed from the office without the permission of the records officer.

(3) **Copying of records.** The public records officer will arrange for copying of any records designated by the requestor and will charge such copying fees as may apply under WAC 174-276-090.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-080, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-080, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-090** (~~(Review of denials for public records requests.)~~) **Copying fees—Payments.** ((1) Any person who objects to the denial of a request for a public record shall petition for prompt review of such decision by tendering a written request for a review of such denial. Such written request by a person demanding prompt review shall specifically reference the written statement by the college denying that person's request for a public record.

(2) Within two business days after receiving the written request by a person petitioning for prompt review of a decision denying a public record, the president of the college or any of her or his designees, which for the purposes of this section may include the public records officer, shall consider such petition.

(3) During the course of the two business days in which the president or her or his designee reviews the decision of the public records officer denying the request for a public record, the president or designee may conduct an informal hearing. During the course of such informal hearing, the president or designee may require that the person requesting the public record appear in person at a reasonable time and place located on the campus and further explain and identify the exact nature of the public record she or he is seeking. Failure by the person requesting the review hearing to appear at such informal hearing shall be deemed a waiver of that person's right to insist upon completion of the review of his request within two business days. If the petitioner requesting review does appear at such informal hearing, then the period for review by the college shall be extended to a period not exceeding twenty-four hours after such person requesting review has appeared before the president or designee.

(4) During the course of the informal hearing conducted by the president or his or her designee under this section, the hearing officer shall consider the obligations of the college fully to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider the exemptions provided in RCW 42.17.310 and the requirement of RCW 42.17.250 insofar as it requires the college to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and to prevent any unreasonable invasion of personal privacy by deleting identifying details.

(5) Administrative remedies shall not be considered exhausted until the college has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.) (1) Fees and payment procedures. The following copying fees and payment procedures apply to requests to the college for public records under chapter 42.56 RCW received on or after the effective date of this section.

(2) **Inspection of records.** There is no fee for inspecting public records made available for inspection by the public records officer under WAC 174-276-080.

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

(4) **Default fees adopted.** The college will charge for copies of public records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). Under RCW 42.56.130, the college may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The college may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the college are summarized in the fee schedule available on the college's website at [www.evergreen.edu](http://www.evergreen.edu).

(5) **Advanced payment required - Fee waivers.** Requestors are required to pay for copies in advance of receiving records or an installment of records. The public records officer will notify the requestor when payment is due. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when: (i) All of the records responsive to an entire request are paper copies only and consist of 25 or fewer pages; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(6) **Copying fee deposits.** The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceed \$25.

(7) **Payment method.** Payment should be made by credit card or debit card or by check or money order payable to The Evergreen State College. The college prefers not to receive cash. Cash payments will be accepted if made in the exact amount.

(8) **Closure of request for nonpayment.** The college will close a request when a requestor fails by the payment due date to pay in the manner prescribed for records, an installment of records, or a required deposit.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-090, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-090, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 90-04-011, filed 1/26/90, effective 2/26/90)

WAC 174-276-100 ((Form Request for public records.)) Review of denials of public records requests.

((REQUEST FOR PUBLIC RECORDS

The Evergreen State College

<del>Section I</del> --IDENTIFICATION. The information requested in Boxes 1 through 4 is not mandatory. If provided, it will allow the Records Officer to contact you, if necessary, in connection with your request.		DATE
1. Name of Requester	2. Representing (if applicable)	
3. Street Address		
4. City-State-Zip Code	If there is any particular urgency attached to this request, please indicate the date by which you need the information.	

~~Section II~~ - NATURE OF REQUEST. Please be specific about the records you wish to see. If you do not know the name of the records, make your request in the form of a question. To comply with RCW 42.17.260(5) (noncommercial use), please sign the certification below.

I certify that the information obtained as a result of this request for public records will not be used in whole or in part to compile a list for commercial purposes.

.....  
Requester's Signature

DO NOT FILL IN BELOW THIS LINE

~~Section III~~ - REQUEST FOR REVIEW

Requested by	Office	Telephone

~~Section IV~~ - DISPOSITION OF REQUEST

1.	2.	3.	4.
5.	6.	7.	8.
		9.))	

(1) Petition for internal administrative review. A requestor who objects to the denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The public records officer will promptly refer the petition to the office of the president. A senior administrator designated by the president will consider the petition and will render a decision within two business days following the initial receipt of the petition by the

public records officer. The time for considering the petition may be extended by mutual agreement of the college and the requestor.

(2) **Review by the attorney general's office.** A requestor who objects to the denial or partial denial of a records request may request the office of the attorney general to review the matter as provided in RCW 42.56.530 and WAC 44-06-160. Requests for attorney general review must be directed to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100.

(3) **Judicial review.** A requestor may obtain judicial 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 review.

[Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-100, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 90-04-011, filed 1/26/90, effective 2/26/90)

**WAC 174-276-110 ((Form—Public records request for copies.))  
Court protection of public records.**

((PUBLIC RECORDS REQUEST  
FOR COPIES

The Evergreen State College

Please indicate the records that you wish to have copied, and number of copies of each. When completed, give this request to a staff member who will accompany you to the cashier and then to the nearest copy center. You will be required to pay for the copies before receiving them.

DESCRIPTION OF MATERIALS TO BE COPIED:

.....  
Requester's Signature))

(1) **Notifying interested persons.** The college, as required by permitted law or contract, including any collective bargaining agreement, and in other appropriate circumstances, may notify persons named in a public record, or to whom the record specifically pertains, that release of the record has been requested and that such persons may apply to the superior court for a protective order under RCW 42.56.540.

(2) **Applying for court protection.** The college in appropriate circumstances may apply to the superior court for a protective order enjoining the examination of any specific public record in accordance with the procedures under RCW 42.56.540. Nothing in this chapter shall be construed as either requiring or prohibiting the college's application to the court for such an order.

[Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-110, filed 1/26/90, effective 2/26/90.]



REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                 |   |
|-----------------|---|
| WAC 174-276-020 | General course and method of decision making.   |
| WAC 174-276-095 | Requests for review.                            |
| WAC 174-276-120 | Form—Request for review—Public records request. |

**WSR 22-10-092**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**  
[Filed May 3, 2022, 5:12 p.m.]

Supplemental Notice to WSR 22-07-073.

Preproposal statement of inquiry was filed as WSR 22-02-053.

Title of Rule and Other Identifying Information: Peace, tribal police, and correction officer certification WAC changes. These WAC changes are to provide clarity and process to chapter 323, Laws of 2021, which provided substantial changes to peace, tribal police, and correction officer certification, decertification, written complaints, and other impacts to the certification RCW found in chapter 43.101 RCW.

Hearing Location(s): On June 8, 2022, at 10:00 a.m., at 19010 1st Avenue South, Burien, WA 98148; or virtually. Notice of the location of the meeting will be provided on the website at [cjtc.wa.gov/about/commission-board-and-meetings](http://cjtc.wa.gov/about/commission-board-and-meetings).

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](mailto: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](mailto:dzable@cjtc.wa.gov), by June 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These WAC changes are to provide clarity and process to chapter 323, Laws of 2021, which provided substantial changes to peace, tribal police, and correction officer certification, decertification, written complaints, and other impacts to the certification RCW found in chapter 43.101 RCW. The WAC changes also include rule changes to the administrative hearing process, a definition section that is chapter-wide, clarifies the background check requirements for hiring agencies, and provides general clean-up and WAC style compliance within the modified sections.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: RCW 43.101.030, 43.101.080, 43.101.085, 43.101.095, 43.101.105, 43.101.115, 43.101.121, 43.101.126, 43.101.135, 43.101.145, 43.101.155, 43.101.157, 43.101.380, 43.101.400, and 43.101.460.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mike Devine, 19010 1st Avenue South, Burien, WA 98148, 206-835-7368.

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; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

May 3, 2022  
Derek Zable  
Records Manager

OTS-3681.4

**Chapter 139-01 WAC**  
**GENERAL ADMINISTRATION AND DEFINITIONS**

AMENDATORY SECTION (Amending WSR 04-07-146, filed 3/23/04, effective 4/23/04)

**WAC 139-01-100 Description of central and field organization.**

The ~~((Washington state criminal justice training))~~ commission consists of the executive director, staff, and ~~((fourteen))~~ 21 commissioners. The executive director will approve recommendations for training ~~((pursuant to commission))~~ consistent with adopted goals and standards ~~((may be approved by the executive director of the commission. Other recommendations will be reviewed by the commissioners for approval or rejection. Approved))~~. The executive director will approve recommendations and other matters of the commission ~~((necessitating implementation or))~~ that require staff involvement ~~((will be assigned by the executive director))~~ to implement and will direct such assignments to appropriate personnel. The commissioners will review other recommendations for approval or rejection. The commissioners determine agency policy and the director and staff implement the policy established by the commissioners.

The business office of the commission is located at 3060 Willamette Drive N.E., Lacey, Washington 98516. The mailing address is Post Office Box 40905, Olympia, Washington 98504. It is maintained by the commission's executive director and staff from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and the days the commission is closed, and serves as a central repository for the commission's records of administration and operation.

The Criminal Justice Training Center, 19010 1st Avenue, Burien, Washington 98148, serves as the commission's primary training site. Other training is conducted locally, regionally, or at centralized locations statewide, as determined by staff.

[Statutory Authority: RCW 43.101.080. WSR 04-07-146, § 139-01-100, filed 3/23/04, effective 4/23/04; WSR 00-17-017, § 139-01-100, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-100, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 86-19-021, filed 9/10/86)

**WAC 139-01-310** (~~("Commission" defined.)~~) **Definitions for Title 139 WAC.** (~~(As used in this chapter "commission" means the Washington state criminal justice training commission.)~~) The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Certified officer**, unless otherwise specified, means any full-time, general authority peace officer, tribal police officer with a recognized certified tribe, and corrections officer as defined in RCW 43.101.010 (6), (10), and (12).

(3) **Commission** means the Washington state criminal justice training commission.

(4) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

(5) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

(6) **Denial** means a commission decision to refuse to grant certification to a prospective certified officer.

(7) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

(8) **Executive** means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

(9) **Expired certification** means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

(10) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3)(h);

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim, white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

(11) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

(12) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

(13) **General authority Washington law enforcement agency** means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

(14) **General authority Washington peace officer** means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(15) **Lapsed certification** means that a certified officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

(16) **Limited authority Washington law enforcement agency** means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services,

the state gambling commission, the state department of corrections, and the office of independent investigations.

(17) **Limited authority Washington peace officer** means any full-time fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

(18) **Petitioner** means the commission's certification division.

(19) **Probationary periods or probationary terms** means a determination by a hearing panel that a certified officer may work under supervision based on agreed-upon terms.

(20) **Reserve officer** means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce criminal laws of this state.

(21) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

(22) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as a certified officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

(23) **Revocation** means to cancel a certified officer's certification.

(24) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

(25) **Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

(26) **Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

(27) **Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

[Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

#### OTS-2600.4

AMENDATORY SECTION (Amending WSR 05-07-049, filed 3/11/05, effective 4/11/05)

**WAC 139-03-010 Adoption of model rules of procedure.** Practice and procedure before the commission shall ~~((be in accordance))~~ comport

with the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended. The model rules hereby adopted are found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this title, the procedural rules adopted in this title shall govern.

((Peace)) Certified officer ((certification)) proceedings before the commission are governed by chapter 139-06 WAC.

[Statutory Authority: RCW 43.101.080. WSR 05-07-049, § 139-03-010, filed 3/11/05, effective 4/11/05; WSR 00-17-017, § 139-03-010, filed 8/4/00, effective 9/4/00.]

### OTS-2597.7

AMENDATORY SECTION (Amending WSR 19-07-036, filed 3/13/19, effective 4/13/19)

**WAC 139-05-200 Requirement of basic law enforcement training for ((general authority peace)) officers.** (1) ((Unless certification eligibility has been reinstated,)) A peace officer or tribal police officer whose certification ((, commission and/or licensing)) has been revoked ((, sanctioned,)) or suspended, or is under review by this state or any other state or territory, is not eligible for a basic law enforcement academy ((certificate, regardless of the officer's prior years of law enforcement service)) diploma.

(2) ((All fully commissioned law enforcement officers of a city, county, or political subdivision of the state of Washington, and officers of the Washington state patrol, unless otherwise exempted by the commission must, as a condition of continued employment, successfully complete a basic law enforcement academy or an equivalent basic academy sponsored or conducted by the commission. Basic law enforcement training must be commenced within the initial six-month period of law enforcement employment, unless otherwise extended by the commission.)) As a condition of continued employment, unless exempted by the commission, all peace officers must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial six-month period of employment and successfully complete the training.

(3) Law enforcement personnel exempted from the requirement of subsection (2) of this section include commissioned personnel:

(a) ((Individuals holding the office of sheriff of any county on September 1, 1979; and

(b) Commissioned personnel:

(i) Whose initial date of full-time, regular and commissioned law enforcement employment within the state of Washington precedes January 1, 1978;

(ii) Who have received a certificate of completion in accordance with the requirement of subsection (2) of this section, and thereafter have engaged in regular and commissioned law enforcement employment without break or interruption in excess of twenty-four months duration; or

~~(iii) Who are employed as tribal police officers in Washington state, natural resource investigators employed by the Washington department of natural resources, special agents employed by the Washington state gambling commission, and liquor enforcement officers employed by the Washington state liquor control board who have received a certificate of successful completion from the basic law enforcement academy or the basic law enforcement equivalency and thereafter engage in regular and commissioned law enforcement employment with that agency without break or interruption in excess of twenty-four months duration.~~

~~(4) Each law enforcement agency of the state of Washington, or any political subdivision thereof, must immediately notify the commission by approved form of each instance where a commissioned officer begins continuing and regular employment with that agency.~~

~~(5) Failure to comply with any of the above requirements of basic law enforcement training will result in notification of noncompliance by the commission to:~~

~~(a) The individual in noncompliance;~~

~~(b) The head of his/her agency; and~~

~~(c) Any other agency or individual, as determined by the commission.) Who have met the training requirements in subsection (2) of this section and who have been employed with no break in service in this state for more than 24 months.~~

~~(b) Who have met the training requirements of subsection (2) of this section and within 24 months of completion are employed as a peace or tribal officer with a general authority law enforcement agency. This includes any limited authority personnel as defined in RCW 10.93.020 and in the definitions of this chapter.~~

~~(4) Law enforcement agencies must use an approved form to immediately notify the commission when an officer begins ongoing regular employment with the agency.~~

[Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-036, § 139-05-200, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 06-17-021, § 139-05-200, filed 8/7/06, effective 9/7/06; WSR 05-20-029, § 139-05-200, filed 9/28/05, effective 10/29/05; WSR 03-19-123, § 139-05-200, filed 9/17/03, effective 10/18/03; WSR 00-17-017, § 139-05-200, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 89-13-024 (Order 14D), § 139-05-200, filed 6/13/89; WSR 87-19-104 (Order 14-D), § 139-05-200, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-05-200, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 14-01-044, filed 12/11/13, effective 1/11/14)

**WAC 139-05-210 ((Basic law enforcement certificate of)) Process for equivalency.** (1) A ((peace)) certified officer whose certification, commission, ((and/or)) or licensing has been revoked((, sanctioned,)) or suspended, or is under review by this state or any other state or territory is not eligible ((for a certificate of equivalency)) to receive certification through an equivalency academy, regardless of the officer's prior years of ((law enforcement)) service.

(2) A ((certificate of completion)) diploma of equivalent basic law enforcement ((training)) academy or corrections officers academy



is issued to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection ~~((6))~~ (9) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Certified officers whose certification, commission, or licensing has lapsed because of a break in service in Washington or any other state or territory for more than 24 months but less than 60 months;

~~(b))~~ (b) Fully commissioned ((peace officers of a city, county, or political subdivision of the state of Washington,)) officers of a general authority or certified tribal law enforcement agency in Washington state who otherwise are eligible to attend the basic law enforcement academy; ((or

~~(b-))~~ (c) Fully commissioned ((peace officers who have attained commissioned law enforcement status by completing a basic training program in this or another state. For this purpose, the term "basic training program" does not include any military or reserve training program or any federal training program not otherwise approved by the commission; or

~~(e-))~~ officers who have been certified by completing a basic training program in Washington or another state;

(d) Corrections officers as defined in RCW 43.101.010(6) who otherwise are eligible to attend the corrections officers academy;

(e) Corrections officers who have successfully completed an approved corrections officers academy in Washington or another state; or

(f) Persons who have not attained commissioned ((peace)) officer status but have successfully completed a basic law enforcement academy recognized as ((a full)) fully equivalent to ((the)) Washington's ((state)) basic law enforcement academy by the commission and within ((twelve)) 12 months of the date of completion ((been made)) has received a conditional offer of employment as a fully commissioned ((peace)) officer in Washington state((; or

~~(d) Persons whose peace officer certification, commission, and/or licensing has lapsed because of a break in service as a full-time, fully commissioned peace officer in this or any other state or territory for more than twenty-four months but less than sixty months and who are required to attend the equivalency)).~~

(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.

(5) Applicants who ((are required to)) must participate in the equivalency academy ((for the purpose of becoming)) to become a certified ((peace)) officer must attend ((the first available session of the equivalency academy)) an academy within six months of hire as a condition of ((certification as a peace officer. Applicants approved to participate in the equivalency academy for training purposes only, will be admitted on a space available basis)) employment.

(6) It is the responsibility of ((the)) an applicant's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner((, and as necessary, to ensure that the participation provided by this section is affected)) and all requirements within this section are met.

~~((5))~~ (7) The decision to request an officer's participation in the equivalency process is ((discretionary with)) at the discretion of the ((head)) sheriff or chief of the officer's employing agency((;))

who must advise the commission of that decision (~~by appropriate notation upon the hiring notification form. Upon receipt of such notification, the commission will provide all necessary forms and information~~). The commission has final approval of the officer's acceptance into the equivalency academy.

~~((6) Upon approval of an applicant's eligibility to participate in the equivalency process,))~~ (8) The commission shall have authority to approve an applicant for participation in the equivalency process.

(9) The applicant's employing agency must submit to the commission the following documentation as a (~~precondition of participation within such~~) condition of participating in the equivalency process:

(a) A statement of the applicant's health and physical condition (~~by an examining physician~~) including a physician signature;

(b) ~~((A record of the applicant's firearms qualification;~~

~~(e)) A liability release agreement by the applicant; ((and~~

~~(d) A criminal records check regarding such applicant.~~

~~(7) If comparable emergency vehicle operations training))~~ (c) Previous employment agencies with dates of employment;

(d) Documentation of completion of the previous training program;

(e) Written syllabus detailing specific areas of training and hours of training;

(f) Documentation of current certification status; and

(g) For peace and tribal officers:

(i) A record of the applicant's firearms qualification;

(ii) Verification of comparable emergency vehicle operations training (EVOC).

If this has not been completed previously, the applicant (~~will be required to~~) must complete the commission's current basic law enforcement (~~academy emergency vehicle operation course, as scheduled by the commission~~) EVOC, either by an instructor certified by the commission or through the Washington state patrol; all costs associated with this training will be the responsibility of the law enforcement agency.

~~((8))~~ (10) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission (~~will:~~

~~(a)) shall issue a~~ (~~certificate of completion of equivalent basic law enforcement training; or~~

~~(b)) diploma and a certificate of certification.~~

(11) If the officer has not met the qualifications to satisfactorily complete the equivalency academy, the commission shall:

(a) Issue a (~~certificate of completion of equivalent basic law enforcement training upon the applicant's successful completion of additional training as the commission may require; or~~

~~(c) Require completion of the commission's))~~ diploma and certificate of certification upon satisfactory completion of any required additional training; or

(b) Require the officer to attend the basic law enforcement academy or the corrections officers academy.

[Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, §

139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 14-01-045, filed 12/11/13, effective 1/11/14)

**WAC 139-05-241 Sponsored reserve officer requirements for basic law enforcement academy training.** (1) A law enforcement agency may sponsor a reserve officer, as defined by WAC 139-05-810, as an applicant for the basic law enforcement (~~(training)~~) academy.

(2) The commission has sole discretion to admit or deny admittance to the basic law enforcement academy. Priority for admittance to the basic law enforcement academy shall be given to applicants currently employed as fully commissioned (~~(law enforcement)~~) officers.

(3) Reserve officer applicants who are admitted to the basic law enforcement academy are responsible for the full cost of attendance (~~(at the basic law enforcement academy,)~~) including payment for room and board if (~~(room and board are requested by the applicant)~~) needed. Full payment for attendance at the basic law enforcement academy must be paid in advance (~~(as a condition of attendance)~~) and is nonrefundable.

(4) Reserve officer applicants must provide proof of agency labor and industries coverage or adequate medical insurance coverage as a condition of admission to the basic law enforcement academy. Such applicants must maintain said medical insurance throughout the duration of the academy(~~(r)~~) and must immediately notify the commission in the event that medical insurance terminates, changes, or coverage and liability under the policy is substantially changed. The commission has sole discretion to determine what constitutes adequate medical insurance coverage for attendance at the basic law enforcement academy.

(5) Reserve officer applicants must satisfy all other requirements for admittance to and continued participation in the basic law enforcement academy(~~(r)~~) to include those requirements set forth in WAC 139-05-220, 139-05-230, and 139-05-240.

(6) Reserve officers are not eligible for peace officer or tribal police officer certification.

[Statutory Authority: RCW 43.101.080. WSR 14-01-045, § 139-05-241, filed 12/11/13, effective 1/11/14.]

AMENDATORY SECTION (Amending WSR 18-13-057, filed 6/14/18, effective 7/15/18)

**WAC 139-05-300 Requirement for in-service training.** The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) (~~(Effective January 1, 2006,)~~) Every peace or tribal officer certified under RCW 43.101.095 or 43.101.157 will complete a minimum of (~~(twenty-four)~~) 24 hours of in-service training annually.

(a) (~~(This requirement is effective January 1, 2006, for incumbent officers.~~

~~(b))~~) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

~~((e))~~) (b) Training may be developed and provided by the employer or other training resources.

~~((d))~~) (c) The commission will publish guidelines for approved in-service training.

~~((e) As of July 1, 2018, the twenty-four))~~) (d) The 24 hours must include the successful completion of the ~~((training))~~) commission's ~~((two-hour))~~) annual online crisis intervention course prescribed under RCW 43.101.427.

(2) ~~((Effective January 1, 2016,))~~) Every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of ~~((twenty-four))~~) 24 hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve ~~((peace officer/tribal))~~) peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic ~~((reserve))~~) law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(d) As of July 1, 2018, the ~~((twenty-four))~~) 24 hours must include the successful completion of the ~~((training))~~) commission's ~~((two-hour))~~) annual online crisis intervention course prescribed under RCW 43.101.427.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a recordkeeping template for use by agencies to track training.

(4) The sheriff or chief of an agency may request an extension of three months for ~~((peace))~~) officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

(c) The three-month extension under this provision provides the individuals named until March 31st to complete the mandated ~~((twenty-four))~~) 24 hours.

(d) Any training obtained during this three-month extension only counts towards the previous year being audited.

(5) The commission auditor may, on a case-by-case basis, grant exceptions for individuals with extenuating circumstances where the employing agency has made every reasonable effort to obtain training for the officer.

[Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-13-057, § 139-05-300, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW

43.101.080. WSR 16-19-040, § 139-05-300, filed 9/14/16, effective 10/15/16; WSR 15-19-042, § 139-05-300, filed 9/10/15, effective 10/11/15; WSR 09-16-098, § 139-05-300, filed 8/4/09, effective 9/4/09; WSR 05-20-029, § 139-05-300, filed 9/28/05, effective 10/29/05; WSR 05-01-112, § 139-05-300, filed 12/15/04, effective 1/15/05.]

NEW SECTION

**WAC 139-05-911 Tribal certification.** Tribal governments may voluntarily request certification for their police officers.

(1) Tribal governments requesting certification for their police officers must enter into a written agreement with the commission.

(2) The agreement must require the tribal law enforcement agency and its officers to comply with all certification requirements as those requirements are applied to all other officers certified under this chapter and the policy of the commission.

(3) To ensure clarity regarding the requirements with which the tribal government and its police officers must comply should the tribal government request certification, a tribal government may first request consultation with the commission.

(4) Applicants for certification as tribal police officers shall meet the requirements of this chapter and the policy of the commission as those requirements are applied to certification of all officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of all officers.

[ ]

AMENDATORY SECTION (Amending WSR 17-10-055, filed 5/2/17, effective 6/2/17)

**WAC 139-05-915** (~~Requirements of training for law enforcement and corrections dog handlers and certification of canine teams.~~) Canines—Training and certification. (1) Canine teams working in the state of Washington shall be certified to the adopted standards as set by (~~criminal justice training commission (CJTC)~~) commission policy.

(a) The standards shall be maintained by the commission (~~staff~~) and readily available to (~~stakeholders~~) the public.

(b) These standards include the minimum performance standards for canine teams performing specific law enforcement or corrections functions.

(c) As a condition of certification, each handler must ensure that the canine performs to a level that is deemed acceptable by the commission in the category for (~~the~~) a team's intended use.

(2) An evaluator shall be (~~a person who is recognized and~~) appointed by the (~~CJTC~~) commission to perform the testing of the canine teams.

(a) The qualifications to become an evaluator (~~relating to~~) for canine certification shall be outlined in the evaluation policy adopted by the (~~CJTC~~) commission.

(b) In evaluating the proficiency of ~~((the))~~ a canine team, evaluators shall use the standards approved by the commission for that particular discipline.

(c) Each certification issued pursuant to these rules will remain valid as set forth in ~~((CJTC))~~ commission policy, as long as the composition and responsibility of the canine team does not change.

(d) A canine team's certification shall automatically expire if the specific handler and canine, originally paired at the time of certification ~~((r))~~ cease to perform canine team functions together or if the function for which the team was certified changes.

(3) This process is not related to ~~((r, nor does it have any effect upon r))~~ and does not change the requirements for ~~((peace))~~ officer certification.

(4) Nothing in these rules is intended to limit the use of canine teams employed by other state or federal agencies for law enforcement purposes, or the use of volunteer canine teams where the handler is not a Washington ~~((peace officer or corrections))~~ officer.

(5) Certified canine teams should have the knowledge and ability to comply with the canine model policy established on December 28, 2021, pursuant to section 3, chapter 320, Laws of 2021. This model policy provides the following:

(a) Canine certification training requirements - Set forth in the commission canine training policy;

(b) Considerations of canine deployment;

(c) Appropriate canine deployment;

(d) Strategies for minimizing law enforcement canine bites;

(e) Circumstances where a canine handler should consider the use of tactics other than deploying a canine;

(f) Prohibited use of a police canine;

(g) Use of canines to apprehend suspects;

(h) Agency canine team reporting protocols;

(i) Circumstances that would warrant the decertification of canine teams; and

(j) Circumstances where the use of voluntary canines and canine handlers may be appropriate.

(6) To report a use of force as outlined in the canine model policy, canine teams should follow the guidelines set forth in WAC 139-06-025.

[Statutory Authority: RCW 43.101.080. WSR 17-10-055, § 139-05-915, filed 5/2/17, effective 6/2/17; WSR 17-01-059, § 139-05-915, filed 12/14/16, effective 1/14/17; WSR 05-20-029, § 139-05-915, filed 9/28/05, effective 10/29/05; WSR 05-01-114, § 139-05-915, filed 12/15/04, effective 1/15/05; WSR 03-07-100, § 139-05-915, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-915, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-915, filed 9/10/86.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 139-05-912	Requirement of training for state fire marshals.
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OTS-3682.5

## Chapter 139-06 WAC

~~((CERTIFICATION, DENIAL, REVOCATION, INVESTIGATION, COMMENCEMENT OF ACTION))~~ CERTIFICATION—NOTICES, INVESTIGATIONS, HEARINGS, AND ACTIONS

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-010 Certification.** (1) ~~((Effective January 1, 2002, all Washington peace))~~ All peace officers, tribal police officers, and correction officers shall ~~((be required to))~~ submit a signed ~~((peace))~~ officer certification form to the commission ~~((, which shall serve as an official))~~ to officially request ~~((for))~~ certification as a ~~((peace))~~ certified officer in Washington state. The form shall be submitted to the commission by the ~~((peace officer at such time as))~~ applicant once the ~~((peace officer))~~ applicant has met ~~((the))~~ all requirements ~~((for certification contained in RCW 43.101.095, and shall certify that the peace officer has met such requirements)).~~

(a) Responsibility for the review and acceptance of an applicant's psychological background, polygraph, and other background materials lies with the hiring agency.

(b) The commission shall issue a certificate ~~((of peace officer certification))~~ upon verification that ~~((the peace officer))~~ an applicant is eligible for certification.

(2) ~~((A peace officer who has satisfied, or has been exempted from, the basic training requirements of RCW 43.101.200, prior to January 1, 2002, but who was not employed as a commissioned peace officer on January 1, 2002, and has not had a break of more than twenty-four consecutive months of law enforcement service, shall upon his or her return to employment submit a peace officer certification form to the commission as described in subsection (1) of this section. The commission shall issue a certificate of peace officer certification upon verification that the peace officer is eligible for certification. If the peace officer's break in law enforcement service was more than twenty-four consecutive months, the peace officer must comply with the training requirements of WAC 139-05-200. The commission shall determine under chapter 43.101 RCW and rules of the commission whether the peace officer is eligible for certification and, if so, it shall determine any requirements that the peace officer must meet as a condition of certification.~~

~~((3))~~ The commission shall allow the certified officer to retain certification provided that the certified officer:

(a) Timely meets basic training requirements or is exempted in whole or in part under RCW 43.101.200 or 43.101.220, or under policies of the commission;

(b) Has not had a break of more than 24 consecutive months of service;

(c) Is not denied certification by the commission under this chapter; and

(d) Has not had certification suspended or revoked by the commission.

(3) Following a break in service and timely meeting the basic training requirements, certified officer shall, upon return to service, submit an officer certification form to the commission as described in subsection (1) of this section.

(a) The commission shall issue a certificate of officer certification upon verification that the applicant is eligible for certification.

(b) If a certified officer's break in service is less than 24 months and the certified officer's certification remains in good standing, no additional training is required.

(c) If a certified officer's break in service was more than 24 consecutive months and less than 60 months and certification is in good standing, the lapsed certified officer must comply with commission training requirements per WAC 139-05-200 and 139-05-210.

(d) If a certified officer's break in service is over 60 months and certification is in good standing, the applicant must attend the basic law enforcement academy or the corrections officer academy. The employing agency may also request a variance per WAC 139-05-940.

(4) A certification granted based on an administrative exemption under WAC 139-05-200 shall remain in effect for the duration of the exemption. However, such certification is subject to the requirements of RCW 43.101.105.

~~((4))~~ (5) Upon determination that a certification form contains missing or ((deficient)) erroneous information, the commission ((staff)) shall notify the ((peace officer)) applicant and the ((peace officer's)) employing agency ((for purposes of this chapter, "peace officer's employing agency" shall mean the law enforcement agency of termination and/or current employing law enforcement agency) of such and the peace officer) and the applicant must submit the ((missing or deficient)) correct information to the commission within ((thirty)) 30 days of the date the request is issued. Failure to submit the ((missing or deficient)) correct information within the required time shall result in a recommendation ((that)) to deny the ((peace officer's)) request for certification ((be denied)).

~~((4))~~ (6) In order to determine ((a peace officer's)) an applicant's eligibility for certification, the commission ((staff)) may request records and information in addition to that provided on the ((peace)) officer certification form. The ((peace officer)) applicant or the ((peace officer's)) applicant's employing agency shall submit the requested records and information within ((thirty)) 30 days of the date the request is issued. Failure to comply with the commission's request shall result in a recommendation ((that)) to deny the ((peace officer's)) request for certification ((be denied)).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-010, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-020 ((Notification of termination.)) Agency reporting requirements—Force, separation, and investigation.** ~~((1) Each law enforcement agency of the state of Washington or any political subdivision thereof who employs peace officers shall notify the commission~~



by approved personnel action report form when a peace officer terminates employment with that agency for any reason. Such notification must be made within fifteen days of the termination becoming final.

(2) The agency shall, upon request by the commission, provide any additional documentation, files or information, as the commission may deem necessary to determine whether the termination provides grounds for revocation or denial of the peace officer's certification.)

(1) Within 15 days the employing agency of either a certified officer or reserve officer shall use an approved form to notify the commission of the following occurrences:

(a) When a certified officer or reserve officer is separated from the agency for any reason;

(b) When the agency first learns of a use of force by a certified officer, including canine bites, that caused serious injury or death;

(c) When the agency first learns that a certified officer has been charged with a crime. An employing agency shall have written policies that require a certified officer to immediately report any pending criminal charges and any conviction, plea, or other case disposition to their agency; and

(d) When the agency makes an initial disciplinary decision for alleged misconduct by a certified officer that is noncriminal and may constitute misconduct within RCW 43.101.105.

(2) An employing agency shall provide timely updates to the commission on the status of a reported internal investigation until the investigation concludes.

(3) If the employing agency accepts a certified officer's resignation or retirement in lieu of termination, the employing agency shall report the reasons and rationale in the information provided to the commission including the findings from any internal or external investigations into alleged misconduct.

(4) If the totality of the circumstances supports a conclusion that a certified officer resigned or retired in anticipation of discipline, the employing agency shall conduct and complete an internal investigation and provide all relevant information to the commission as it would if the certified officer were still employed by the agency, regardless of whether the misconduct was discovered at the time:

(a) When such discipline if carried forward would more likely than not have led to discharge; or

(b) If the certified officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the certified officer's suspension or discharge.

(5) Within 15 days of the conclusion of its internal investigation, the agency shall provide the commission with a summary of findings.

(a) If sustained misconduct results in separation a commission separation form is also required.

(b) The commission will review the separation form and may request investigative files for review of certification misconduct.

(6) The agency shall, upon request by the commission, provide any records and information the commission deems necessary to determine whether the certified officer committed misconduct that falls within RCW 43.101.105.

(7) In addition to disciplinary action authorized in RCW 43.101.105, the commission may impose a civil penalty not to exceed \$10,000 for the failure by a certified officer or an employing agency to timely and accurately report information pursuant to this section.

(8) Pursuant to RCW 43.101.135(7) an employing agency may not enter into any agreement or contract with a certified officer or labor union that:

(a) Agrees not to report conduct, or to delay reporting, or to preclude disclosure of any relevant information to the commission, including any promise not to inform the commission that a certified officer may have committed misconduct in exchange for allowing that certified officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the certified officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and any other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-020, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-030 Investigative ((cooperation)) authority—Duty to cooperate.** ~~((All agencies))~~ (1) An agency shall cooperate in any investigation conducted by the commission regarding a ((peace)) certified officer's certification status. This includes providing records and information when requested.

(a) Upon receipt of a request an agency has 30 days to provide requested records.

(b) If the totality of the circumstances supports a conclusion that a certified officer resigned or retired in anticipation of discipline, then the employing agency shall conduct and complete an investigation and provide all relevant information to the commission as if the certified officer were still employed by the agency under RCW 43.101.135.

(2) A certified officer must authorize the release of their personnel file to the employing agency and the commission including disciplinary, termination, civil or criminal investigation, and other records and information directly related to a certification before the commission under RCW 43.101.095 and 43.101.105.

(3) Requests from the commission for records do not constitute a public record request and are not subject to any waiting periods or timelines associated with the Public Records Act, chapter 42.56 RCW.

(4) A certified officer must also consent to and facilitate a review of the certified officer's social media accounts when relevant to an investigation brought before the commission pursuant to RCW 43.101.095(4).

(a) The certified officer is not required to provide login information pursuant to RCW 49.44.200.

(b) The release of records and information may not be delayed, limited, or precluded by any agreement or contract between the certified officer or the certified officer's union and the entity responsible for the records and information.

(5) An employing agency may not enter into any agreement or contract with a certified officer or union that:

(a) Agrees not to report conduct or to delay reporting or to preclude disclosure of any relevant records and information to the commission, including any promise not to inform the commission that the certified officer may have committed misconduct in exchange for allowing a certified officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the certified officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-030, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-040 Investigation (~~(, probable cause~~ **Commencement of proceedings**)) **and appeal—Procedures for misconduct.** (1) (~~Upon request by a peace officer's employing agency, on its own initiative, or upon the filing of a complaint, on an approved form, by a law enforcement officer or duly authorized representative of a law enforcement agency, the commission may commence an investigation to determine whether there is probable cause to believe that a peace officer's certification should be denied or revoked under RCW 43.101.105.~~**

~~(2))~~ The commission may investigate to determine whether there is preponderance of the evidence to believe the certified officer's certification should be denied, revoked, or suspended. Investigations may commence on the commission's own initiative under RCW 43.101.105, or upon receiving a complaint or request from any member of the public including law enforcement or corrections agencies and certified officers.

(2) The commission may conduct its investigation either concurrently or consecutively to any internal investigation conducted by the employing agency, except in cases where a revocation decision requires a finding that the certified officer's conduct violated policy or law.

(3) The commission may initiate the hearings process by preparing a statement of charges regardless of the status or posture of any internal disciplinary action by the employing agency.

(4) Upon a determination by the commission that there is a preponderance of the evidence to believe that a certified officer's certification should be denied, revoked, or suspended, the commission shall prepare a statement of charges and commence proceedings under RCW 43.101.155.

(5) Upon a determination by the commission ((~~staff~~)) that there is not ((~~probable cause~~)) preponderance of the evidence to revoke or deny ((~~a peace~~)) the certified officer's certification, a copy of the decision not to proceed, with a brief statement of the reasons for the

decision, shall be furnished to the ~~((peace))~~ certified officer's employing agency~~((r))~~ and the complainant, if any. ~~((A-peace))~~

~~((6))~~ The certified officer's employing agency, or the complainant, if any, may request a review by the ~~((chair))~~ executive director of the commission, or ~~((his-or-her))~~ their designee, of a determination that there is not ~~((probable-cause))~~ preponderance of the evidence to revoke or ~~((deny-a-peace))~~ suspend the certified officer's certification, by making such request in writing within ~~((fourteen))~~ 14 days of the ~~((mailing))~~ receipt of written notification of the decision not to proceed.

~~((3))~~ Upon a determination by the commission that there is probable cause to believe that the peace officer's certification should be revoked or denied, the commission shall prepare a statement of charges and commence revocation proceedings under RCW 43.101.155.

~~((4))~~ Any designee of the chair under this section must be a member of the commission. ~~((7))~~ The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

~~((8))~~ The commission shall maintain all records obtained during an investigation in a permanent file in accordance with the retention schedule provided in RCW 43.101.400.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-040, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-050 (~~(Notification Request for hearing Default.)~~)**

**Statement of charges and notification for hearing.** ~~((1))~~ The commission ~~((staff))~~ shall prepare a statement of charges ~~((r-stating))~~ providing the grounds for denial or revocation of the ~~((peace))~~ certified officer's certification under RCW 43.101.105.

~~((a))~~ The statement of charges shall ~~((be-accompanied-by))~~ include a notice ~~((that))~~ informing the ~~((peace))~~ certified officer ~~((is))~~ that they are entitled to a hearing on the denial or revocation of their certification and the steps to request a hearing.

~~((b))~~ The notice ~~((shall-include-the-steps-the-peace-officer-must-take-to-request-a-hearing-The-notice))~~ and statement of charges shall be sent to the ~~((peace))~~ certified officer and ~~((a-copy))~~ to the ~~((peace-officer's-employing))~~ agency that employed the certified officer at the time of the alleged misconduct. If the certified officer is employed by a different law enforcement agency at the time the statement of charges is issued, that agency shall also be sent a copy of the statement of charges.

~~((2))~~ A request for a hearing on the ~~((denial))~~ potential suspension or revocation of certification must be made by the ~~((peace))~~ certified officer on an approved form and received by the commission within ~~((sixty))~~ 60 days from the date of ~~((the-mailing-of))~~ sending the statement of charges.

~~((a))~~ If a hearing is requested, the officer must provide an email address that constitutes the officer's legal address for purposes of any subsequent communication from the commission.

(b) If a hearing is requested, the first prehearing conference shall be held within 14 days of receipt of the hearing request form. The hearing shall occur within 90 days of the first prehearing conference.

(c) Any date related to the hearing schedule including, but not limited to, the dates of prehearing and status conferences, due dates for pleadings, briefings, and exhibits and the date of the hearing itself may be extended upon mutual agreement of the parties or for good cause.

(3) Failure by the certified officer to request a hearing within 60 days of sending of the statement of charges, or failure by the certified officer or their counsel to appear at a requested hearing or ((at a)) any prehearing or status conference, shall constitute default. In such circumstances, the commission shall enter an order of default and ((the hearing panel shall enter a)) final order under RCW 34.05.440.

(4) ((A peace)) The certified officer may waive the right to a hearing ((by so indicating on the hearing request)) on an approved form. By waiving the right to a hearing, the ((peace)) certified officer acknowledges that ((his or her)) their certification ((should be denied or revoked and the hearings panel shall enter such an)) will be subject to discipline as deemed appropriate by the commission and that the commission shall enter a final order.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-050, filed 12/20/02, effective 1/20/03.]

### **HEARING AND OUTCOMES**

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-060 Hearing panels.** (1) The commission shall ((es-  
tablish)) cultivate a list of ((eligible)) qualified individuals to be appointed as members of ((the)) hearing panels in certification ac-  
tions.

(a) Names of qualified individuals interested in serving as panel members under RCW 43.101.380 may be submitted ((for consideration from law enforcement agencies, law enforcement organizations representing management or labor, from institutions of higher learning, and from eligible individuals interested in serving as panel members. Staff shall review applications and submit a list of eligible individuals to the commission. The commission shall have sole discretion over the selection of panel members.

(2) A new panel may, but need not, be established for each hear-  
ing.

(3) Each hearing panel shall select a presiding member who shall be responsible for signing documents on behalf of the panel, and for conducting prehearing conferences and any other hearings that may be

necessary. If a panel hears more than one hearing, a new presiding member may, but need not, be selected for each hearing.) by any person for consideration by the commission. The commission will establish desired qualifications in policy.

(b) With the exception of appointed members of the commission, interested individuals shall submit the:

(i) Hearing panel member application;

(ii) Cover letter;

(iii) Resume;

(iv) The names and contact information for three references; and

(v) Letter of support from their agency supervisor or administrator. Members of the public may submit a letter of recommendation in lieu of a letter of support.

(c) Materials shall be submitted to the commission's hearing coordinator at the following address: 19010 1st Avenue South, Burien, Washington 98148. Materials may also be submitted via email, as identified on the commission website.

(2) The commission shall review applications and submit a list of qualified individuals to the commission. The commission shall have sole discretion over the selection of panel members.

(3) Prior to the hearings panel being selected for a hearing, the commission will confirm with panelists that they have no conflicts of interest as outlined in the hearing panel member handbook. Examples of conflicts of interest include, but are not limited to, the below situations:

(a) Personal, working, and financial relationships, past or present; and

(b) Shared affiliations in groups, organizations, and activities.

(4) If a panel member is concerned that they have a conflict of interest, including a relationship with a party or a witness that would prevent the panel member from judging the case fairly, they must notify the commission as soon as possible. If the petitioner or respondent has any motion for disqualification of a panel member, the motion must be filed prior to the first prehearing conference.

(5) In all hearings requested under RCW 43.101.155, an administrative law judge (ALJ) appointed under chapter 34.12 RCW shall preside. The ALJ makes necessary rulings and issues a proposed recommendation but is not entitled to vote.

(6) When a hearing is requested in relation to a certification action of a Washington peace officer, the commission shall appoint to the panel:

(a) One police chief or sheriff from an agency, who is not a current or past employer of the certified officer;

(b) One certified Washington officer who is at or below the level of first line supervisor and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

(7) When a hearing is requested in relation to a certification action of a Washington corrections officer, the commission shall appoint to the panel:

(a) A person who heads either a city or county corrections agency or facility or of a Washington state department of corrections facility;

(b) One corrections officer who is at or below the level of first line supervisor and who has at least 10 years' experience as a corrections officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

(8) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel:

(a) One tribal police chief;

(b) One tribal police officer who is at or below the level of first line supervisor, and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-060, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-070** ~~((Location of hearings—Identification of panel—Disqualification.))~~ **Conference and hearings procedures.** ~~((1) Upon receipt of a request for hearing, the hearing panel shall set the date and time of the hearing, and the date and time of a prehearing conference. Hearings will be held at the commission's training facility located at: 19010 1st Avenue South, Burien, Washington, 98148, unless the panel determines otherwise.~~

~~(2) Notification of the dates of the hearing and initial prehearing conference shall also contain the names of the members of the hearing panel.~~

~~(3) Any motion for disqualification of a panel member must be filed prior to the initial prehearing conference.)~~ (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent the commission in all adjudicative proceedings before the commission.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

(a) Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference. The notice will con-

tain the date and time for the first prehearing conference as well as sign-on information and the names of the hearing panel members for the hearing.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the administrative law judge (ALJ) may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the agreements made by the parties.

(5) The purpose of the second prehearing conference will be to address any objections to the parties' witnesses and exhibits and ascertain the parties' readiness to proceed to hearing. During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to witness or exhibits, and any remaining motions.

(a) The ALJ will make any necessary rulings on motions and objections to witnesses and exhibits.

(b) An order shall be issued by the ALJ within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing teleconference, the panel members will be provided with all materials admitted into evidence, as well as all briefing submitted by the parties.

(6) Failure of the respondent or the respondent's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. The admitted exhibits binder shall be used by both parties to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any exhibits or any versions of exhibits not previously admitted.

(9) If an in-person hearing is scheduled, the respondent must attend the proceeding in person.

(a) In person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.



(b) If a virtual hearing is scheduled, the respondent shall remain visible on screen at all times the parties are on the record. Failure to comply with this attendance requirement shall constitute default and the hearings panel shall enter a final order revoking certification under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) Failure of the respondent or their attorney to attend or participate in the hearing will result in a finding of default and an order will be entered under RCW 34.05.440.

(12) The standard of proof in actions before the commission is a preponderance of the evidence. RCW 43.101.380(1).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-070, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-080 Filing of documents for hearings.** ~~((A))~~ (1) If a hearing is to be conducted in person, an original and five copies of ((all documents, pleadings and other correspondence shall be filed at the commission's training facility located at)) the opening brief, witness list, exhibit list, and exhibits are to be submitted to the commission at: 19010 1st Avenue South, Burien, Washington, 98148 ((, addressed to the attention of the certification manager, and one copy shall also be served on the opposing party or their attorney, if represented by counsel. Service shall be accomplished in accordance with the superior court civil rules.)) as outlined in the prehearing order.

(a) All hearing documents received by the commission will be shared with the petitioner, respondent, and the administrative law judge (ALJ).

(b) In addition, an electronic copy of each document shall be provided to the commission, the petitioner, the ALJ, and the respondent or their representative. Service shall be accomplished in accordance with the superior court civil rules.

(2) Witness lists must include a statement of the subject matter on which the witness is expected to testify. Failure to include subject matter in such a statement may be grounds for exclusion of testimony regarding that subject matter at the hearing.

(3) The petitioner and respondent should submit a proposed findings of fact and conclusion of law within three days of the conclusion of the hearing.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-080, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-100** (~~(Attendance at hearing—Burden of proof.)~~) **Outcomes for determinations of misconduct—Suspension, probation, re-training.** (~~(1) The peace officer shall appear in person at the hearing. Failure to appear in person shall constitute default and the hearing panel shall enter an order under RCW 34.05.440.~~

~~(2) The standard of proof shall be clear, cogent, and convincing evidence.)~~

(1) When an applicant or certified officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may deny, suspend, or revoke certification, require remedial training, and impose a probationary term. In determining an appropriate action following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

(a) Information provided by the complainant(s), if any;

(b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;

(c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;

(d) Any information obtained by the commission through its own investigation or research;

(e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and

(f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended the certified officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate the certified officer based solely on imposition of suspension by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating the certified officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as certified officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3) if the reserve officers are certified pursuant to RCW 43.101.095.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-110 Final order.** (~~((1) The hearing panel shall enter its final order within ninety days of the conclusion of the hearing, unless the time period is extended for good cause, or waived. A copy of the order shall be sent to the parties, the peace officer's employing agency, and the complainant, if any.~~

~~(2) The decision of the hearing panel shall be the final decision of the commission.))~~ (1) The administrative law judge (ALJ) makes necessary rulings and issues a proposed recommendation but is not entitled to vote.

(2) The hearings panel shall enter the final order within 90 days of the conclusion of the hearing. The commission shall serve a copy of the order to the parties and the certified officer's employing agency. It will also appear on the commission website.

(3) The final order issued by the hearings panel shall be the final decision of the commission.

(4) The transcripts, admitted evidence, recordings, and written decision of the hearings panel on behalf of the commission are not confidential or exempt from public disclosure and are subject to subpoena and discovery proceedings in civil actions.

(5) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-110, filed 12/20/02, effective 1/20/03.]

**( (REINSTATEMENT OF CERTIFICATION) )**

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-130 Standards for readmission to academy, certification after denial, and reinstatement of certification.** (~~((1)(a) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for any reason not also involving discharge for disqualifying misconduct is eligible for readmission and certification upon meeting the requirements set forth in WAC 139-05-242 (Readmission to basic law enforcement academy). The commission may impose a probationary period upon readmission.~~

~~(b) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for disqualifying misconduct is eligible for readmission and certification only upon meeting the requirements of subsection (4) of this section.~~

~~(2) A peace officer whose certification is denied or revoked based upon prior administrative error of issuance is eligible for certification or reinstatement of certification upon a determination by~~

~~the commission that the factors that should have prevented the peace officer from being certified have been remedied and the peace officer is otherwise eligible for certification.~~

~~(3) A peace officer whose certification is denied or revoked based upon failure to cooperate, or interference with an investigation, is eligible for certification or reinstatement of certification if the peace officer's conduct did not also involve disqualifying misconduct, or other illegal or unethical conduct, and upon a showing that the peace officer has thereafter fully cooperated and is otherwise eligible for certification. In making its determination, the commission may consider the nature and seriousness of the peace officer's conduct.~~

~~(4) A peace officer whose certification is denied or revoked based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction, may, five years after revocation or denial, petition the commission for certification or reinstatement of certification. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.~~

~~(5) A peace officer whose certification is denied or revoked based solely upon a criminal conviction may petition the commission for certification or reinstatement of certification immediately upon final judicial reversal of the conviction. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.~~

~~(6) A peace officer whose certification has been denied or revoked, or whose certification has lapsed, due to a break of more than twenty-four consecutive months of law enforcement service as a peace officer, may upon return to service as a law enforcement officer, petition the commission for certification or reinstatement of certification. Upon receipt of a petition for certification or reinstatement of certification, the commission shall determine if the peace officer is eligible for certification or reinstatement of certification. The terms of certification or reinstatement of certification may be subject to the requirement of basic law enforcement academy or the basic law enforcement equivalency academy in addition to other requirements as imposed by the commission.)~~ (1) A person denied a certification based upon dismissal or withdrawal from a basic academy under RCW 43.101.105 (3) (a) is eligible for readmission and certification upon meeting standards established in the rules of the commission.

(2) A person whose certification is denied or revoked based upon prior administrative error of issuance, failure to cooperate, or interference with an investigation is eligible for certification upon meeting standards established in commission policy per RCW 43.101.115(2).

(3) A person whose certification is mandatorily denied or revoked pursuant to RCW 43.101.105(2) is not eligible for certification at any time.

(4) A person whose certification is denied or revoked for reasons other than provided in subsections (1) through (3) of this section may, five years after the revocation or denial, petition the commission for reinstatement of certification or for eligibility for reinstatement. The commission may hold a hearing on the petition to consider reinstatement, and the commission may allow reinstatement based upon standards established in commission policy. If the certificate is reinstated or eligibility for certification is determined, the commission shall establish a probationary period of certification.

(5) A person whose certification is revoked based solely upon a criminal conviction may petition the commission for reinstatement immediately upon final judicial reversal of the conviction. The commission may hold a hearing on a request to consider reinstatement, and the commission may allow reinstatement based on standards established in commission policy. If the certificate is reinstated or if eligibility for certification is determined, the commission shall establish a probationary period of certification.

(6) A person whose certification has been denied or revoked may petition the commission for certification or reinstatement of certification as such time as they are eligible under RCW 43.101.115 and this section.

(7) The commission's policies and decisions regarding reinstatement shall align with its responsibilities to enhance public trust and confidence in the law enforcement profession and correctional system.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-130, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 14-01-046, filed 12/11/13, effective 1/11/14)

**WAC 139-06-140 Hearing on petition for eligibility for certification or reinstatement of certification.** (1) ~~((The commission may hold a hearing to determine the peace officer's eligibility for certification or reinstatement of certification.~~

~~(2) Upon receipt of a petition for eligibility for certification or reinstatement of certification, and a determination by commission staff that a hearing is necessary or required, the peace officer and the peace officer's employing agency shall be notified in writing. Where a hearing is not held, the peace officer and the peace officer's employing agency shall be notified in writing of the commission's decision to grant or deny the petition and the reasons for the decision. Where the petition is denied, the peace officer or the peace officer's employing agency may request a hearing before a hearing panel by making such request in writing within fourteen days of the mailing of notification that the petition was denied.~~

~~(3))~~ The commission may hold a hearing to determine the previously certified officer's eligibility for certification or reinstatement of certification per RCW 43.101.115.

(a) The commission will review the request and determine whether to hold a hearing based on criteria established in commission policy. All parties shall be notified of the decision in writing and the reasons for the decision, if denied.

(b) Where a petition is denied, all parties may appeal the denial utilizing commission appeal processes within 14 days of receipt of notification that the petition was denied.

(2) Hearings on eligibility for certification or reinstatement of certification shall be conducted by a hearing panel.

(a) The hearing panel as defined in RCW 43.101.380 shall review the certification file and any additional records and information submitted by the parties prior to the hearing and may request any additional records and information ((in order)) to assist in its determination.

(b) The issues shall be limited to whether ((the peace officer is eligible)) eligibility for certification is met, whether certification should be reinstated, and whether ((appropriate)) probationary terms should be imposed as a condition of reinstatement pursuant to WAC 139-06-150.

((4)) (3) The hearing panel shall enter its decision on the petition by written order as soon as possible within ((ninety)) 90 days of the conclusion of the hearing, unless the time ((period)) is extended for good cause((7)) or waived. A copy of the order shall be sent to the parties and to ((the peace officer's)) their employing agency.

((5)) (4) The decision of the hearing panel shall be the final order of the commission.

((6) A peace officer) (5) The respondent whose petition for eligibility for certification or reinstatement of certification was denied by a hearing panel for reasons other than those outlined in RCW 43.101.115 (1), (2), and (3) may file a subsequent petition after five years have ((elapsed)) lapsed since the date of the entry of the hearing panel's final written order denying the prior petition. If a second petition for reinstatement is denied, no further petitions may be filed. The commission will not consider or accept ((for filing)) a petition for reinstatement submitted after two prior petitions have been denied.

[Statutory Authority: RCW 43.101.080. WSR 14-01-046, § 139-06-140, filed 12/11/13, effective 1/11/14; WSR 03-02-010, § 139-06-140, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-150 ((Probationary terms on reinstatement.)) Terms of suspension and retraining.** ((Upon a determination that a peace officer should be certified or reinstated, the commission may impose a term of probation which may include requirements to ensure that the peace officer has taken positive and substantial steps or actions to reconcile the causes for which the peace officer's certification was denied or revoked. When probation is imposed, the terms shall be furnished in writing to the peace officer and the peace officer's agency. Failure of the peace officer to meet the terms of probation may be grounds for a hearing to determine the status of the peace officer's certification.)) (1) The length and conditions of any suspension of a certification imposed under RCW 43.101.105 will be included in the final order.

(2) Consistent with any conditions included in a final order imposing a suspension of a certification under (1) of this section, the

commission may require the respondent to take positive and substantial steps including retraining to reconcile the causes for which the hearings panel suspended the respondent's certification.

(3) The period of suspension of a certification may be for a specified length of time, conditioned upon the completion of retraining or other requirements specified in the final order, or both. However, the period of a suspension of a certification shall last no longer than one year.

(4) Any retraining imposed in a final order shall comply with a list of approved retraining maintained by the commission.

(5) When such conditions have been satisfactorily met and any mandatory minimum length of time has concluded, the commission shall issue a notice lifting the suspension.

(a) Prior to lifting a suspension, the commission shall ensure that any conditions of a suspension of certification as described in (1) of this section are completed; and

(b) The notice lifting the suspension will be provided to the respondent and the employing agency, if any.

(6) If after one year any conditions included in a final order imposing a suspension of a certification under (1) of this section have not been satisfactorily met, the commission shall seek to revoke the respondent's certification.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-150, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

**WAC 139-06-160 Miscellaneous.** ~~((These))~~ The rules ~~((are intended to supplement the procedures))~~ contained in this chapter are ~~intended to supplement the procedures contained in~~ the Administrative Procedure Act, chapter 34.05 RCW, and the model rules of procedure, chapter 10-08 WAC.

(1) In the case of conflict between the ~~((Administrative Procedure Act, the))~~ model rules of procedure ~~((,))~~ and the ~~((procedural))~~ rules adopted in this chapter, the ~~((procedural))~~ rules adopted in this chapter shall govern.

~~((Peace))~~ (2) Certified officer certification proceedings are distinct from proceedings before the commission under chapter 139-03 WAC and this chapter is not intended to modify chapter 139-03 WAC.

(3) This chapter is not intended to affect standards relating to civil service appeals, to collective bargaining remedies, or to any similar remedies ~~((for direct review))~~ of employment actions.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-160, filed 12/20/02, effective 1/20/03.]

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-06-090 Prehearing conferences.  
 WAC 139-06-120 Petition for reinstatement of certification.

**OTS-2602.4**

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

**WAC 139-07-010 ((Conditions)) Conditional offers of employment.**

~~((As a condition of continuing employment for any applicant who has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer, including any person whose certification has lapsed as a result of a break in service of twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall submit to a background investigation including a check of criminal history, a psychological examination, and a polygraph or other truth verification assessment as authorized by the county, city, or state law enforcement agency in compliance with the requirements of this chapter.)) For the purpose of this chapter, the definition of applicant means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.~~

(1) Any applicant who has been offered a conditional offer of employment as a certified officer must submit to a background investigation to determine suitability for employment.

(2) This includes certified officers whose certification has lapsed as a result of a break in service except those recalled to active military service.

(3) Hiring agencies may not make a nonconditional offer of employment prior to an applicant's completion of the background check.

(a) Hiring agencies shall verify in writing to the commission that they complied with all background check requirements prior to making any final offer of employment; and

(b) Responsibility for all background verification lies with the hiring agency.

(4) Reserve officers shall submit to the same background requirements as certified officers.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-010, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-010, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 18-19-066, filed 9/17/18, effective 10/18/18)

**WAC 139-07-020 Background information.** ~~((1) Requirements for the applicant.~~

~~(a) Personal history statement. The applicant shall complete and submit to the employing agency a personal history statement on a form~~



prescribed by the employer before the start of a background investigation. The personal history statement form shall contain questions and answers which aid in determining whether the person is suitable for employment as a certified peace officer or a reserve officer. The questions shall address whether the applicant meets the minimum requirements for employment, has engaged in conduct or a pattern of conduct which would jeopardize the public trust in the law enforcement profession, and is of good moral character.

~~(b) Information requirements. To assist with the background investigation, the applicant shall provide the following:~~

~~(i) Verification of immigrant or citizenship status as either a citizen of the United States of America or a lawful permanent resident. A copy of any of the following United States government or United States Citizenship Immigration Services documents are acceptable proof: A United States birth certificate, a United States passport, a permanent resident card, a certificate of naturalization, or a certificate of citizenship.~~

~~(ii) Proof of education. A certified copy of a diploma, certificate, transcript, or homeschool transcript is acceptable proof.~~

~~(iii) Record of any military discharge. A certified copy of the Military Service Record (DD Form 214, Member 4) is acceptable proof.~~

~~(iv) Personal references. The names and addresses of at least three people who can provide information as personal references.~~

~~(v) Previous employers or school attendees. The names and addresses of all employers and schools attended within the last ten years, at a minimum.~~

~~(vi) Residence history. A listing of the complete residential addresses for the last ten years.~~

~~(2) Requirements of the agency. At a minimum, the agency shall include the following in its collection and assessment of an applicant's background information, which also includes determining if the information provided by the applicant is accurate and truthful. The agency shall:~~

~~(a) Query all the law enforcement agency records in jurisdictions listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(b) Query the motor vehicle division driving records from any state listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(c) Complete and submit a fingerprint card inventory sheet to the Federal Bureau of Investigation and Washington state patrol records division for query;~~

~~(d) Query the National Crime Information Center/Interstate Identification Index (NCIC/III) and the Washington Criminal Information Center/Washington State Identification System (WACIC/WASIS) or the equivalent for each state listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(e) Contact a minimum of three references and a reasonable number of previous employers listed in subsection (1)(b)(iv) and (v) of this section and document the answers to inquiries concerning whether the person meets the standards of this section; and~~

~~(f) At the conclusion of all of the requirements of the collection and assessment of an applicant's background information, the agency shall complete a report that attests to all the requirements, including the requirements of WAC 139-05-220.) For the purpose of this chapter, the definition of applicant means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.~~

(1) Hiring agency background checks must include the following records and information for new applicants:

(a) Criminal history;

(b) National decertification indices or data banks;

(c) Commission records including employment history and certification status;

(d) All disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct, to include the outcome of any investigation regardless of the result, and the reason for separation from employment. Previous law enforcement or corrections employers must provide this information, including the reason for separation from employment with the agency, within 30 days of receiving a written request from the agency conducting the background check;

(e) Verification from the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any impeachment disclosure lists;

(f) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined in commission policy;

(g) A review of the applicant's social media accounts;

(h) Verification of citizenship status as either a citizen of the United States of America or a lawful permanent resident;

(i) A psychological examination and recommendation administered by a qualified professional pursuant to chapter 18.71 or 18.83 RCW, in compliance with standards established in commission policy per WAC 139-07-030;

(j) A polygraph or equivalent assessment administered by a qualified professional with appropriate training and in compliance with standards established in commission policy per WAC 139-07-040; and

(k) Any basis for disqualification listed under RCW 43.101.105 (2) or (3).

(2) An applicant may be offered employment by more than one agency. The background results may be shared with more than one agency under the following circumstances:

(a) The hiring agency which initiated the background investigation agreed to share the results of the investigation in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to have the report;

(c) The background investigation was completed within six months of the request to share records; and

(d) The job analyses of both agencies are substantially similar.

(3) Prior to a potential officer's registration into an academy, the hiring agency shall certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as an officer.

[Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-19-066, § 139-07-020, filed 9/17/18, effective 10/18/18. Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-020, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-020, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

**WAC 139-07-030 Psychological examination.** For the purpose of this chapter, the definition of applicant means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(1) The psychological examination shall be administered by a ~~((("))~~ qualified professional ~~((, " which means))~~ who is a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW.

~~(a) ((The qualified professional who administers the examinations should be trained and experienced in psychological testing, test interpretation, psychological assessment techniques, and the administration of psychological examinations specific to peace officer applicants of law enforcement agencies.~~

~~(b-))~~ The examiner shall be trained and experienced in psychological testing, test interpretation, psychological examination techniques, and the administration of psychological examinations specific to law enforcement or corrections agencies;

(b) Agencies should confirm with the Washington state department of health that the examiner is in good standing;

(c) If the examiner has less than one year experience in psychological examination for public safety, then they shall be supervised by an examiner with at least two years' experience in psychological examination for public safety;

(d) The examiner shall be trained and knowledgeable in issues regarding discrimination, implicit and explicit bias, and police-community relations;

(e) The examiner shall be trained and knowledgeable in issues of posttraumatic stress and traumatic brain injury;

(f) The examination ~~((should))~~ shall be based upon attributes considered most important for effective performance as ~~((a peace))~~ an officer ~~((as obtained))~~; such attributes may be identified from a job analysis and data provided by the ~~((law enforcement agency making the conditional offer of employment. The data may include interviews, surveys, or other appropriate sources where job performance information was obtained.~~

~~(c) Psychological examination reports older than six months shall not be considered valid for the purpose of RCW 43.101.080(19) and 43.101.095(2).~~

~~(d-))~~ hiring agency. Attributes should include self and emotional regulation, decision making and judgment, conflict management, stress tolerance, dominance vs. passivity, and other interpersonal and psychological characteristics that allow for insight to an individual's potential to adequately perform the essential duties of an officer and to determine what, if any, risk factors exist in the applicant's profile based on objective examination results; and

(g) The examination report, including all ~~((testing))~~ examination materials and documentation used to complete the examination report, ~~((should))~~ shall be maintained in a manner consistent with applicable confidentiality, records retention, and public disclosure laws and rules.

(2) ~~((Through the examination, the qualified professional shall determine the psychological suitability of the peace officer applicant by an assessment of whether he or she is free from job-relevant mental~~

~~and emotional impairments including, but not limited to, psychopathology, personality disorders, and inappropriate behavior patterns.~~

~~(3))~~ Psychological examination reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

(3) The examiner shall determine the psychological suitability of the applicant by an examination of whether they are free from job-relevant mental and emotional impairments including, but not limited to, psychopathology, personality disorders, and inappropriate behavior patterns.

(4) The sole purpose of the psychological examination under this chapter is compliance with RCW 43.101.080((19)) (15) and 43.101.095(2)((a)) and shall not be used for any other purpose ((by the law enforcement agency or any party)).

~~((4))~~ (5) It is the responsibility of the hiring agency to receive and review the results of the psychological exam. The commission does not routinely review these exams but may do so pursuant to RCW 43.101.400.

(6) Prior to the ((administration of the)) examination, the applicant must ((sign an informed)) consent in writing to the conditions of the evaluation. The informed consent should clearly state the ((law enforcement)) hiring agency is the client so that the applicant ((is informed)) knows that the entire examination would be shared with the agency.

~~((5))~~ (7) The examination shall include the following:

(a) A minimum of ((two)) three written psychological tests((+

~~(i) The tests should be)) that are objective, job-related, psychological instruments validated for use in evaluating law enforcement or correctional officers((-));~~

(i) For the purpose of this section, a validated test is defined as a test that has a substantial research base for interpretation with normal range populations in general and public safety applications in particular;

(ii) ((If mail-order, internet based, or computerized tests are employed, the examiner should verify and interpret individual results\*)) Validated tests used must be the most current versions and be consistent with current, objective, and relevant norms; and

(iii) It is the examiner's responsibility to determine what tests can and will be used to make a valid and reliable determination of applicant suitability based on available instruments that include current, objective, and relevant norms to the position in question;

(b) ((A)) At least one comprehensive, face-to-face, clinical interview with the applicant conducted after a complete review of the psychological test results; if a complete review of the psychological test results is not completed prior to the interview, then a second interview shall be conducted;

(c) An interpretation of the psychological test results by the ((qualified professional)) examiner;

(d) An opinion on psychological suitability by the ((qualified professional)) examiner; and

(e) A list and summary of the information relied upon for the ((assessment)) examination.

~~((6))~~ (8) Findings of the psychological examination shall be ((reported in writing to the law enforcement agency requesting the examination-

~~(7))~~ shared by the examiner with the hiring agency verbally with an opportunity to ask questions, as well as reported in writing.

(9) The examiner shall provide an opinion regarding the likelihood that an applicant can safely and effectively perform the essential functions of the position. Any risk factors should also be indicated as well. Areas of essential function to evaluate include, but are not limited to:

- (a) Adaptability and flexibility;
- (b) Avoidance or risk-tasking behaviors;
- (c) Conscientiousness and dependability;
- (d) Decision making and judgment;
- (e) Emotional regulation and stress tolerance;
- (f) Impulse control and attention to safety;
- (g) Integrity and ethics;
- (h) Social competence; and
- (i) Teamwork.

(10) The written report shall include the following:

- (a) The date of completion and a signature of the (~~qualified professional who conducted the examination~~) examiner;
  - (b) Name and date of birth of applicant, position applied for, and agency which made the conditional offer of employment;
  - (c) A list and summary of the information relied upon for the (~~assessment~~) examination;
  - (d) All the components of the examination, as defined in this chapter;
  - (e) Factors which could affect the reliability and validity of the (~~assessment~~) examination; and
  - (f) An (~~assessment~~) opinion of the psychological suitability of the applicant to be (~~a peace officer or reserve~~) an officer for the (~~particular law enforcement~~) hiring agency.
- ~~((8) A peace officer)~~ (11) An applicant may be offered employment by more than one (~~law enforcement~~) agency that is conditional on the results of a psychological examination.
- ~~((9))~~ (12) The (~~peace officer~~) applicant may be required to pay all or a portion of the cost of the examination under RCW 43.101.080(~~((19))~~) (15) and 43.101.095(2).
- ~~((10))~~ (13) One psychological examination may be shared with more than one (~~law enforcement~~) agency under the following circumstances:
- (a) The agency which initiated the psychological examination and the (~~qualified professional conducting the examination~~) examiner agreed to share the psychological examination report and recommendations with (~~the other law enforcement~~) another agency;
  - (b) The applicant signed a release permitting (~~the other~~) another agency to have the psychological examination report;
  - (c) The psychological examination was completed within six months of the request (~~by the other law enforcement agency~~); and
  - (d) The job analyses of (~~the initiating and other law enforcement~~) both agencies (~~must be~~) are substantially similar.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-030, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-030, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

**WAC 139-07-040 Polygraph examination or other truth verification assessment.** For the purpose of this chapter, the definition of applicant means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

(2) Standards for polygraph ((and other truth verification)) assessments ((-)):

(a) ((Equipment used to conduct truth verification assessments as a part of the preemployment testing for certification of a peace officer or reserve law enforcement officer must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer.

(b) The examiners, analysts, and their techniques for conducting a truth verification assessment must comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination.

(c) Truth verification assessments under this chapter are intended as one of the tools for incremental validity to risk assessment and risk management efforts surrounding the evaluation and selection of peace officer and reserve officer applicants.

(d) Preemployment tests and assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement. The truth verification assessment questions should be simple, direct, and easily understood by the applicant. Test information and results should be considered confidential within the screening process to be used exclusively by the county, city, or state law enforcement agency to assist with the selection of their applicant.

(2) Polygraph examination.

(a) An experienced polygraph examiner who is a graduate of a polygraph school accredited by the American Polygraph Association (APA) shall conduct the polygraph test. The examiner must also show that he or she is in compliance with completion of a minimum of thirty hours of APA-approved continuing education every two calendar years.

(b) Polygraph tests administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph testing, risk assessment, risk management, and field investigation principles.

(c) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(i) The polygraph examiner shall record a chart semiannually to demonstrate correct functioning and shall be maintained by the examiner for a period of one year.

(ii) At a minimum, a polygraph instrument shall continuously record the following components during the testing process:

(A) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;

~~(B) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;~~

~~(C) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and~~

~~(D) A motion sensor.~~

~~(d) The county, city, or state law enforcement agency which authorized the polygraph test shall maintain all documentation of the test for a minimum of three years from the date of the test unless otherwise required by law.) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) and belong to the Northwest Polygraph Association or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;~~

~~(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;~~

~~(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;~~

~~(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and~~

~~(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.~~

~~(3) Polygraph assessments:~~

~~(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;~~

~~(b) Polygraph examiners shall ask questions on the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers;~~

~~(c) Model questions shall be adopted in commission policy; and~~

~~(d) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.~~

~~(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:~~

~~(a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;~~

~~(b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;~~

~~(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and~~

~~(d) A motion sensor.~~

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) A polygraph finding of dishonesty shall disqualify an applicant.

(9) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-040, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-040, filed 3/10/10, effective 4/10/10.]

**OTS-3683.4**

## **Chapter 139-17 WAC COMPLAINTS**

### NEW SECTION

**WAC 139-17-010 Complaint submission and investigation.** (1) Any individual may submit a written complaint to the commission about a certified officer's conduct. Filing a complaint does not make a complainant a party to the commission's action.

(a) Individuals who need assistance filing a written complaint will be accommodated.

(b) The commission shall make the complaint process transparent and accessible including accepting complaints in any format, accepting anonymous and third-party complaints, making language translation available as needed to accommodate complainants, and refraining from inquiring about complainants' age, immigration status, or other information not relevant to the complaint.



(c) The commission shall review complaints thoroughly and conduct preliminary investigation to evaluate whether to investigate.

(d) Complainants shall receive information about the process for investigation and any potential adjudication and receive the name of a point of contact at the commission to answer questions as needed. Complainants shall also receive a letter providing the final disposition of their complaint, regardless of the decision to investigate or the outcome of the investigation.

(2) The commission shall refer criminal complaints to the law enforcement agency with jurisdiction.

(3) The commission has sole discretion whether to investigate a complaint, and the commission has sole discretion whether to investigate issues or concerns relating to revocation or suspension on any other basis, without restriction as to the source or the existence of a complaint. Referral of a criminal investigation does not preclude or necessarily delay a commission investigation.

(4) The commission may investigate a pattern of complaints or other conduct that individually may not have resulted in a formal adjudication of wrongdoing, but when considered together demonstrate conduct that would constitute a violation of RCW 43.101.105 (2) or

(3). The commission must consider the employing agency's policies and procedures and the certified officer's job duties and assignment in determining what constitutes a pattern.

(5) The commission shall conduct timely and expedient investigations.

(a) The commission may await the conclusion of an agency's internal administrative investigation or a criminal investigation in order to gain access to greater information or conduct a more thorough investigation.

(b) The commission shall not delay investigations in which the employing agency does not fully cooperate per WAC 139-06-030.

(6) A person who files a complaint in good faith under this section is immune from suit or any civil action related to the filing or the contents of the complaint.

(7) All complaints must be resolved with a written determination, regardless of the decision to investigate.

[]

**WSR 22-10-093**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**  
[Filed May 3, 2022, 5:18 p.m.]

Supplemental Notice to WSR 22-05-039.

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

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 record[s] 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.

May 3, 2022  
Derek Zable  
Records Manager

**OTS-3600.3**

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) **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.

(4) **Executive director** means the executive director of the Washington state criminal justice training commission.

(5) **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.

(6) **Public Records Act** means the same as chapter 42.56 RCW.

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

(8) **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](http://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](http://ejtc.wa.gov) or at the Washington state criminal justice training commission in Burien.))

(a) The commission shall have available to all persons at its offices in Burien a current index which provides identifying information as to the following records:

(i) All records issued before July 1, 1990, for which the commission has maintained an index;

(ii) Final orders entered after June 30, 1990, that are issued in adjunctive proceedings as defined in RCW 34.05.010(1) and contain an analysis or decision of substantial importance to the commission in carrying out its duties;

(iii) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and contain an analysis or decision of substantial importance to the commission in carrying out its duties;

(iv) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990;

(v) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990; and

(vi) Meeting minutes of the governing body of commission.

(b) The system of indexing shall be as follows:

(i) The indexing system shall be administered by the commission's public records officer and shall be located at the Burien campus.

(ii) Copies of indexes shall be available for public inspection and copying in the same manner provided for the inspection and copying of public records.

(iii) The public records officer shall establish and maintain a separate index for each item contained in (a) (i) through (vi) of this subsection as follows:

(A) All final orders and declaratory orders determined by the commission to contain analyses or decisions of substantial importance to the commission shall be listed alphabetically by the titles of the hearing or controversy and shall contain a phrase describing the important issue or issues.

(B) Interpretive statements and policy statements shall be indexed by the applicable program.

(C) The meeting minutes of the governing body of the commission shall be indexed chronologically.

(iv) The public records officer shall update all indexes at least once a year and shall revise such indexes when deemed necessary.

**(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](http://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 photocopies 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 commis-~~

sion.)) (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.

(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.

[ ]

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.

[]

## WSR 22-10-100

## PROPOSED RULES

## GRAYS HARBOR COLLEGE

[Filed May 4, 2022, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-012.

Title of Rule and Other Identifying Information: Repeal chapter 132B-310 WAC; revise WAC 132B-125-430 and 132B-125-440.

Hearing Location(s): On June 8, 2022, at 11:00 a.m., at 1620 Edward P. Smith Drive, 2000 Building, 4th Floor Board Room, Aberdeen, WA. Campus map can be found here <https://www.ghc.edu/locations/main-campus-map>.

Date of Intended Adoption: June 8, 2022.

Submit Written Comments to: Darin Jones, 1620 Edward P. Smith Drive, Aberdeen, WA 98520, email [darin.jones@ghc.edu](mailto:darin.jones@ghc.edu).

Assistance for Persons with Disabilities: Contact Darin Jones, phone 360-538-4234, email [darin.jones@ghc.edu](mailto:darin.jones@ghc.edu).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating the student conduct code and complying with Title IX regulations.

Reasons Supporting Proposal: Updating the student conduct code to current practices and updating Title IX regulations in compliance with the updated United States Department of Education Title IX policies.

Statutory Authority for Adoption: RCW 28B.50.130.

Statute Being Implemented: Chapter 132B-310 WAC; WAC 132B-125-430 and 132B-125-440.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Grays Harbor College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Darin Jones, 1620 Edward P. Smith Drive, Aberdeen, WA 98520, 360-538-4234.

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 19.85.061 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: Federal Register printed amendments to Title IX regulations (85 F.R. 30575). This policy specifically impacts current WAC 132B-120-300, 132B-120-305, 132B-120-310, and 132B-120-315.

May 3, 2022  
Darin Jones  
Human Resources

OTS-3700.1

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

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

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

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

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

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

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

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

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

~~((6))~~ **(5) Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

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

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

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

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

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

[Statutory Authority: RCW 28B.50.140(13). WSR 21-12-008, § 132B-125-430, filed 5/19/21, effective 6/19/21.]

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

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

~~(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclu-~~



~~sion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).~~

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.50.140(13). WSR 21-12-008, § 132B-125-440, filed 5/19/21, effective 6/19/21.]

**WSR 22-10-101**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
[Filed May 4, 2022, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-013.

Title of Rule and Other Identifying Information: WAC 308-124A-785 Broker first active renewal, 308-124A-790 Continuing education clock hour requirements, new 308-124A-802 Defining prescribed Washington real estate fair housing curriculum, 308-124H-810 Course titles reserved for prescribed curriculum courses, 308-124H-820 General requirements for course approval, and 308-124H-825 Secondary education provider course content approval application.

Hearing Location(s): On June 8, 2022, at 1:00 - 2:30 p.m. Zoom virtual hearing, web link <https://dol-wa.zoom.us/j/84564602549?pwd=aVh0a0VfamlaLldhRnJDU0paZmxmdz09>, Meeting ID 845 6460 2549, Passcode 903319; Call-in one tap mobile +12532158782,,84564602549#,,,,\*903319# US (Tacoma), +14086380968,,84564602549#,,,,\*903319# US (San Jose), Meeting ID 845 6460 2549, Passcode 903319. Find your local number: <https://dol-wa.zoom.us/j/84564602549?pwd=aVh0a0VfamlaLldhRnJDU0paZmxmdz09>. If hearing participants have any issues accessing the public hearing web link or calling in, they can email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov) and we will contact you to assist. If you would like to submit a written comment, these are considered with the same gravity as those that are submitted at the public hearing and can be emailed to [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov).

Date of Intended Adoption: June 9, 2022.

Submit Written Comments to: Stephanie Sams, 405 Black Lake [Boulevard], Olympia, WA 98502, email [doleducation5378@dol.wa.gov](mailto:doleducation5378@dol.wa.gov), by May 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing (DOL) is conducting rule making related to implementing fair housing for real estate licensees. This is the result of SSB 5378, which passed the Washington state legislature in 2021. This requires new and current professional real estate licensees in Washington to take instructional hours in fair housing. DOL is tasked with providing the fair housing and prevention of unfair practices curriculum for real estate licensees. The proposed rules incorporate the "Washington State Real Estate Fair Housing" course into existing rules, make nonsubstantive technical and grammatical edits for clarity, and clarifies that licensees attest to meeting certain requirements and are subject to audit. Please see attached itemized summary of WAC changes.

Reasons Supporting Proposal: To update existing administrative rules to incorporate the new fair housing and consumer protection requirements outlined in SSB 5378 (2021).

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: RCW 18.85.041, 18.85.101, 18.85.211.

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: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Sams, 405 Black Lake [Boulevard], Olympia, WA 98502; Implementation

and Enforcement: Tim Allen, 405 Black Lake [Boulevard], Olympia, WA 98502.

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 legislation imposes additional requirements on all new and current professional real estate licensees in Washington; to take an additional six hours of instruction in fair housing. The rules adopt changes necessary to implement SSB 5378 (2021) in regard to fair housing and consumer protection education required for real estate licensees. The rule changes proposed include adding "Washington State Real Estate Fair Housing" to the list of required courses, clarifies that licensees must attest to completion of required training and may be subject to audit, and makes some grammatical and streamlining edits for clarification purposes. These requirements are dictated by statute, and are being further clarified in rule, without adding additional requirements or new practices/procedures for licensees.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: This rule making will adopt changes necessary to implement SSB 5378 (2021) in regard to fair housing and consumer protection education required for real estate licensees. The rule changes proposed include adding "Washington State Real Estate Fair Housing" to the list of required courses, clarifies that licensees must attest to completion of required training and may be subject to audit, and makes some grammatical and streamlining edits for clarification purposes.

May 4, 2022  
Ellis Starrett  
Rules Coordinator

### OTS-3753.1

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124A-785 Broker first active license renewal.** The minimum requirements for a broker to be issued the first renewal of an active license are: The broker has furnished proof of successful completion of ~~((ninety))~~ 90 clock hours ~~((commenced))~~ started after the date first licensed, from ~~((a))~~ prescribed ~~((curriculum))~~ curricula approved by the real estate program, including real estate law, advanced practices and ~~((thirty))~~ 30 hours in approved continuing education, including the core curriculum and Washington real estate fair housing.

[Statutory Authority: RCW 18.85.040 and 18.85.041. WSR 10-06-078, § 308-124A-785, filed 3/1/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 14-16-054, filed 7/29/14, effective 8/29/14)

**WAC 308-124A-790 Continuing education clock hour requirements.**

A licensee (~~shall submit~~) must attest to the department (~~evidence of~~) satisfactory completion of clock hours, pursuant to RCW 18.85.211, in the manner (~~and on forms~~) prescribed by the department.

(1) A licensee applying for renewal of an active license (~~shall submit evidence of~~) must attest to the completion of at least (~~thirty~~) 30 clock hours of instruction in a course(s) approved by the real estate program and (~~commenced~~) started within (~~forty-eight~~) 48 months of a licensee's renewal date. The clock hours of instruction attested to are subject to audit by the department.

(a) A minimum of (~~fifteen~~) 15 clock hours must be completed within (~~twenty-four~~) 24 months of the licensee's current renewal date, and a portion of that (~~fifteen~~) 15 must include three hours of the prescribed core curriculum defined in WAC 308-124A-800 and requisite hours of the prescribed Washington real estate fair housing curriculum defined in WAC 308-124A-802.

(b) Up to (~~fifteen~~) 15 clock hours of instruction beyond the (~~thirty~~) 30 clock hours submitted for a previous renewal date may be carried forward to the following renewal date. Failure to (~~report~~) attest to the successful completion of the prescribed core (~~curriculum~~) and Washington real estate fair housing curricula clock hours (~~shall~~) will result in denial of license renewal.

(c) If Washington real estate fair housing education was not completed during initial qualification for licensure, renewing licensees must take the six-hour Washington real estate fair housing education; and every renewal after must include three hours of Washington real estate fair housing education.

(2) The (~~thirty~~) 30 clock hours (~~shall~~) must be satisfied by (~~evidence of~~) completion of approved real estate courses as defined in WAC 308-124H-820. ((A)) Portions of the (~~thirty~~) 30 clock hours of continuing education must include three clock hours of prescribed core curriculum defined in WAC 308-124A-800 and three clock hours of prescribed Washington real estate fair housing curriculum as defined in WAC 308-124A-802.

(3) Courses for continuing education clock hour credits (~~shall be commenced~~) must be started after issuance of a first license.

(4) A licensee (~~shall~~) must not place a license on inactive status to avoid the continuing education requirement or the post-licensing requirements. If a licensee (~~shall submit evidence of~~) is inactive less than one year, they must attest to the completion of continuing education clock hours to activate ((a)) the license (~~if activation occurs within one year after the license had been placed on inactive status and the last renewal of the license had been as an inactive license~~). A licensee (~~shall submit evidence of completing~~) must attest to the post-licensing requirements if not previously satisfied upon returning to active status. The clock hours of instruction

or post-licensing requirements attested to are subject to audit by the department.

(5) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(6) Clock hour credits for continuing education (~~shall~~) will not be accepted if:

(a) The course is not approved pursuant to chapter 308-124H WAC and chapter 18.85 RCW;

(b) Course(s) was taken to activate an inactive license pursuant to RCW 18.85.265(3);

(c) Course(s) submitted to satisfy the requirements of RCW 18.85.101 (1)(c), broker's license, RCW 18.85.211, 18.85.111, managing broker's license and WAC 308-124A-780, reinstatement.

(7) Instructors (~~shall~~) will not receive clock hour credit for teaching or course development.

[Statutory Authority: RCW 18.85.041. WSR 14-16-054, § 308-124A-790, filed 7/29/14, effective 8/29/14; WSR 13-14-077, § 308-124A-790, filed 7/1/13, effective 8/1/13. Statutory Authority: RCW 18.85.041, 18.85.101, and 18.85.181. WSR 11-09-009, § 308-124A-790, filed 4/8/11, effective 5/9/11. Statutory Authority: RCW 18.85.040 and 18.85.041. WSR 10-06-078, § 308-124A-790, filed 3/1/10, effective 7/1/10.]

#### NEW SECTION

**WAC 308-124A-802 Defining prescribed Washington real estate fair housing curriculum.** Washington real estate fair housing curriculum is a specific course of study approved by the director that provides practical information relating to the right to choose housing free from unlawful discrimination; regardless of age, disability or level of ability, family situation, gender (including sexual orientation, gender identity, and gender expression), marital status, national origin (including language), race, religion, or veteran status. The department will prescribe the curriculum outline to use in developing the curriculum for approval.

[]

#### **OTS-3754.1**

AMENDATORY SECTION (Amending WSR 14-16-054, filed 7/29/14, effective 8/29/14)

**WAC 308-124H-810 Course titles reserved for prescribed curriculum courses.** Any approved school (~~desiring~~) wanting to offer (~~fundamentals, business management, broker management, real estate law, advanced real estate law, real estate practices, or advanced real estate practices,~~ shall utilize the most recent course curriculum prescribed by the department, and shall include in its title the phrase "real estate fundamentals," "real estate brokerage management," "real estate law," "advanced real estate law," "business management," "real

estate practices," or "advanced real estate practices," if submitted for approval for clock hours. No other courses shall use these phrases in their titles)) mandated real estate training must have "real estate" included in the title, submit for approval of clock hours, and cannot use the following prescribed core curricula phrases in other course titles:

- (1) Real estate fundamentals;
- (2) Real estate brokerage management;
- (3) Real estate law;
- (4) Advanced real estate law;
- (5) Real estate business management;
- (6) Real estate practices;
- (7) Advanced real estate practices; and
- (8) Washington real estate fair housing.

[Statutory Authority: RCW 18.85.041. WSR 14-16-054, § 308-124H-810, filed 7/29/14, effective 8/29/14. Statutory Authority: RCW 18.85.040 and 18.85.041. WSR 10-06-078, § 308-124H-810, filed 3/1/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124H-820 General requirements for course approval.**

Courses (~~shall~~) will meet the following requirements:

- (1) Be offered by a private entity approved by the director to operate as a school;
- (2) Be offered by a tax-supported, public technical or community college or other institution of higher learning that certifies clock hours as indicated in RCW 18.85.011(5), consistent with the approval standards prescribed by the director and this chapter;
- (3) Be offered by the Washington real estate commission;
- (4) Have a minimum of three hours of course work or instruction for the student. A clock hour is a period of (~~fifty~~) 50 minutes of actual instruction;
- (5) Provide practical information related to the practice of real estate in any of the following real estate topic areas:
  - (a) Department prescribed curricula:
    - (i) Fundamentals;
    - (ii) Practices;
      - (A) Residential;
      - (B) Commercial;
    - (iii) Advanced practices;
      - (A) Residential;
      - (B) Commercial;
    - (iv) Real estate law;
    - (v) Advanced real estate law;
    - (vi) Brokerage management;
    - (vii) Business management;
    - (viii) Core curriculum;
      - (A) Residential;
      - (B) Commercial;
      - (C) Property management;
  - (b) Open curricula:
    - (i) Legal aspects;

- (ii) Taxation;
  - (iii) Appraisal;
  - (iv) Evaluating real estate and business opportunities;
  - (v) Property management and leasing;
  - (vi) Construction and land development;
  - (vii) Ethics and standards of practice;
  - (viii) Washington real estate fair housing;
  - (ix) Real estate closing practices;
  - ~~((ix))~~ (x) Current trends and issues;
  - ~~((x))~~ (xi) Principles/essentials;
  - ~~((xi))~~ (xii) Finance;
  - ~~((xii))~~ (xiii) Hazardous waste and other environmental issues;
  - ~~((xiii))~~ (xiv) Commercial;
  - ~~((xiv))~~ (xv) Real estate sales and marketing;
  - ~~((xv))~~ (xvi) Instructor development;
  - ~~((xvi))~~ (xvii) Consumer protection;
  - ~~((xvii))~~ (xviii) Cross cultural communication;
  - ~~((xviii))~~ (xix) Advanced management practices;
  - ~~((xix))~~ (xx) Use of computers and/or other technologies as applied to the practice of real estate;
- (6) Be under the supervision of an instructor approved to teach the topic area, who ~~((shall))~~ will, at a minimum, be available to respond to specific questions from students on an immediate or reasonably delayed basis;
- (7) The following types of courses will not be approved for clock hours:
- (a) Mechanical office and business skills, such as, keyboarding, speed-reading, memory improvement, grammar, and report writing;
  - (b) Standardized software programs such as word processing, email, spreadsheets or databases; an example: A course using spreadsheet program to demonstrate investment analysis would be acceptable, but a course teaching how to use a spreadsheet would not be acceptable;
  - (c) Orientation courses for licensees, such as those offered by trade associations;
  - (d) Personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business;
  - (e) Courses that are designed or developed to serve other professions, unless each component of the curriculum and content specifically shows how a real estate licensee can utilize the information in the practice of real estate;
  - (f) Personal finance, etiquette, or motivational type courses;
  - (g) Courses that are designed to promote or offer to sell specific products or services to real estate licensees such as warranty programs, client/customer database systems, software programs or other devices. Services or products can be offered during nonclock hour time, such as breaks or lunchtime. Letterhead, logos, company names or other similar markings by itself, on course material are not considered promotional;
  - (h) Clock hours will not be awarded for any course time devoted to meals or transportation;
- (8) Courses of ~~((thirty))~~ 30 clock hours or more which are submitted for approval ~~((shall))~~ will include a comprehensive examination(s) and answer key(s) of no fewer than three questions per clock hour with a minimum of ~~((ninety))~~ 90 questions, and a requirement of passing course grade of at least 70 percent; essay question examina-

tion keys (~~shall~~) will identify the material to be tested and the points assigned for each question;

(9) Include textbook or instructional materials approved by the director, which (~~shall~~) will be kept accurate and current;

(10) Not have a title which misleads the public as to the subject matter of the course;

(11) The provider's course application (~~shall~~) will identify learning objectives and demonstrate how these are related to the practice of real estate;

(12) Courses offering the prescribed core curriculum (~~shall~~) will meet the requirements of WAC 308-124A-800 and those offering the prescribed Washington real estate fair housing curriculum will meet the requirements of WAC 308-124A-802;

(13) Only primary providers (~~shall~~) will be approved to teach the prescribed core curriculum and Washington real estate fair housing; and

(14) Course providers offering core curriculum within a course exceeding three clock hours must clearly indicate in the application for approval where the core curriculum elements are met in the course.

[Statutory Authority: RCW 18.85.040 and 18.85.041. WSR 10-06-078, § 308-124H-820, filed 3/1/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 14-16-054, filed 7/29/14, effective 8/29/14)

**WAC 308-124H-825 Secondary education provider course content approval application.** (1) An approved school (applicant) may offer courses (~~(, except for the mandated courses,)~~) that are currently approved for another (~~(education provider or course developer provided a secondary provider course content approval application is submitted to the department;~~

~~(2-))~~ secondary education school after:

(a) The applicant (~~(must also)~~) provides written authorization by the (~~(original))~~ secondary education (~~(provider/developer))~~ school permitting the use of the course content by the applicant (~~(;~~

~~(3-))~~; and

(b) The department issues a certificate of course approval (~~(will be provided))~~ to the secondary education (~~(provider;~~

~~(4-))~~ school.

(2) The applicant must use the course approval number issued by the department on all certificates of course completion (~~(;~~

~~(5-))~~.

(3) Course approval is valid only for the dates of the (~~(original education provider/course developer's approval;~~ and

~~(6-))~~ originally approved course.

(4) The applicant may not apply for secondary (~~(provider course content approval applications may not be used for))~~ school approval for the following courses: Real ((state)) estate fundamentals, real estate brokerage management, real estate law, advanced real estate law, business management, real estate practices, advanced real estate practices, Washington real estate fair housing, or core course.

[Statutory Authority: RCW 18.85.041. WSR 14-16-054, § 308-124H-825, filed 7/29/14, effective 8/29/14. Statutory Authority: RCW 18.85.040



and 18.85.041. WSR 10-06-078, § 308-124H-825, filed 3/1/10, effective 7/1/10.]

**WSR 22-10-104**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed May 4, 2022, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-23-053.

Title of Rule and Other Identifying Information: WAC 246-840-990 Fees and renewal cycle. The department of health (department) in consultation with the nursing care quality assurance commission (commission) is proposing fee increases for registered nurses (RNs), licensed practical nurses (LPNs), and advanced registered nurse practitioners (ARNPs). A fee change for nursing technicians (NTs) is not being proposed at this time.

Hearing Location(s): On June 13, 2022, at 2:00 p.m. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_dYNOpgeZTVqsB5ZCOMvMig](https://us02web.zoom.us/webinar/register/WN_dYNOpgeZTVqsB5ZCOMvMig). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: June 20, 2022.

Submit Written Comments to: Ross Valore, P.O. Box 47850, Olympia, WA 98540-7850, email <https://fortress.wa.gov/doh/policyreview>, [HSQAfeerules@doh.wa.gov](mailto:HSQAfeerules@doh.wa.gov), by June 13, 2022.

Assistance for Persons with Disabilities: Contact Ross Valore, phone 360-236-4531, TTY 711, email [HSQAfeerules@doh.wa.gov](mailto:HSQAfeerules@doh.wa.gov), by June 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department in consultation with the commission is proposing fee increases to ensure the department complies with RCW 43.70.250 and that profession fees are sufficient to cover the cost of licensing. The proposed fee increases are necessary to cover the cost of a database solution to replace an outdated licensing system, for staffing to continue nurse license processing within legislated timelines, and staffing to address increased workload associated with nursing assistants and the long-term care crisis. A technical change is proposed to WAC 246-840-990(5) to change "WAC 246-12 Part 2" to "WAC 246-12-020 through 246-12-051."

Reasons Supporting Proposal: RCW 43.70.250 requires that the costs of licensing in each profession be fully borne by members of that profession and the office of financial management (OFM) requires agencies to maintain a reasonable working capital reserve in state accounts to cover fluctuations in cash flow. Without fee increases, the commission's fund balance will fall below the recommended level by the end of fiscal year 2022 and decline thereafter. Three of the four nursing professions are being proposed for a fee increase: RNs, LPNs, and ARNPs. RNs comprise 80 percent of the 146,000 nursing professionals, LPNs eight percent, and ARNPs eight percent. The application fee and renewal fee increase for RNs is proposed to increase by \$25 from \$99 to \$124. The application fee and renewal fee increase for LPNs is proposed to increase by \$5 from \$64 to \$69. ARNPs application fee and renewal fee increase is proposed to increase by \$5 from \$125 to \$130. These fee increases are recommended to meet the OFM requirements without unduly burdening any of the nursing professions financially. A fee change for NTs is not being proposed at this time because there are far fewer in the profession and raising fees for them would cause an undue burden financially.

The technical change is necessary to clearly identify the rules that must be complied with.

Statutory Authority for Adoption: RCW 18.36A.060, 18.36A.140, 43.70.110, 43.70.250, 43.70.280.

Statute Being Implemented: RCW 18.36A.060, 18.36A.140, 43.70.110, 43.70.250, 43.70.280.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Archuleta, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2748; Implementation: Amber Zawislak, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4785; and Enforcement: Catherine Wood, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4757.

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. As defined in RCW 34.05.328 (5)(b)(vi), the department has determined that no significant analysis is required because the revisions are to set or adjust fees.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: As defined in RCW 34.05.310 (4)(f), the department has determined that no small business economic impact statement is required because the revisions are to set or adjust fees.

May 3, 2022  
 Kristin Peterson, JD  
 Deputy Secretary  
 Policy and Planning  
 for Umair A. Shaw, MD, MPH  
 Secretary

## OTS-3711.1

AMENDATORY SECTION (Amending WSR 17-07-038, filed 3/8/17, effective 7/1/17)

**WAC 246-840-990 Fees and renewal cycle.** (1) A licensed practical nurse (LPN) or a registered nurse (RN) must renew his or her license every year on the licensee's birthday.

(2) When applying for a license an applicant for an initial or renewal LPN license or RN license must pay, in addition to the application fee, the University of Washington (UW) health sciences online library access (HEAL-WA) surcharge and the central nursing resource center (nursing center) surcharge, as required in RCW 43.70.110.

(3) An advanced registered nurse practitioner (ARNP) must renew his or her license every two years on the licensee's birthday. An ARNP must also hold a valid RN license and pay all associated fees every year on the licensee's birthday.

(4) A nursing technician must renew his or her registration every year on the practitioner's birthday. The renewal must be accompanied by an attestation as required in RCW 18.79.370 that includes the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire (~~thirty~~) 30 days after the anticipated graduation date. The expiration date may be extended to (~~sixty~~) 60 days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010(15).

(5) A practitioner who holds more than one credential will be charged separate fees for each credential, in compliance with (~~chapter 246-12 WAC, Part 2~~) WAC 246-12-020 through 246-12-051 and RCW 43.70.110.

(6) The following nonrefundable fees will be charged:

**Application Fees**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner <sup>1</sup>	Nursing Technician
Application Fee	<del>((99))</del> <u>124</u>	<del>((64))</del> <u>69</u>	<del>((125))</del> <u>130</u>	25
HEAL-WA Surcharge	16	16	0	0
Nursing Center Surcharge	5	5	0	0
<b>Total</b>	<del>((120))</del> <u>145</u>	<del>((85))</del> <u>90</u>	<del>((125))</del> <u>130</u>	<b>25</b>

<sup>1</sup>Pays a \$125 application fee per specialty license. If not currently a licensed RN, must also pay RN application fees.

**On Time Renewal**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner <sup>2</sup>	Nursing Technician
Renewal Fee	<del>((99))</del> <u>124</u>	<del>((64))</del> <u>69</u>	<del>((125))</del> <u>130</u>	25
HEAL-WA Surcharge	16	16	0	0
Nursing Center Surcharge	5	5	0	0
<b>Total</b>	<del>((120))</del> <u>145</u>	<del>((85))</del> <u>90</u>	<del>((125))</del> <u>130</u>	<b>25</b>

<sup>2</sup>Pays a \$125 renewal fee per specialty license once every (~~(2))~~ two years. Must also renew RN license every year.

**Late Renewal - Up to One Year Past the Expiration**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner <sup>3</sup>	Nursing Technician
Renewal Fee	<del>((99))</del> <u>124</u>	<del>((64))</del> <u>69</u>	<del>((125))</del> <u>130</u>	25
HEAL-WA Surcharge	16	16	0	0
Nursing Center Surcharge	5	5	0	0
Late Renewal Penalty	50	50	50	25
<b>Total</b>	<del>((170))</del> <u>195</u>	<del>((135))</del> <u>140</u>	<del>((175))</del> <u>180</u>	<b>50</b>

<sup>3</sup>Pays \$50 per specialty license in late fees.

**Late Renewal - One Year or More Expired**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
Renewal Fee	((99)) <u>124</u>	((64)) <u>69</u>	((125)) <u>130</u>
HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
Late Renewal Penalty	50	50	50
Expired Licenses Reissuance	70	70	0
<b>Total</b>	<b>((240))</b> <b><u>265</u></b>	<b>((205))</b> <b><u>210</u></b>	<b>((175))</b> <b><u>180</u></b>

**Retired Active Renewal**

	Registered Nurse	Licensed Practical Nurse
Renewal Fee	44	44
HEAL-WA Surcharge	16	16
Nursing Center Surcharge	5	5
<b>Total</b>	<b>65</b>	<b>65</b>

**Retired Active Renewal—Late Renewal - Up to One Year Past the Expiration**

	Registered Nurse	Licensed Practical Nurse
Renewal Fee	44	44
HEAL-WA Surcharge	16	16
Nursing Center Surcharge	5	5
Late Renewal Penalty	45	45
<b>Total</b>	<b>110</b>	<b>110</b>

**Retired Active Renewal—Late Renewal - One Year or More Expired**

	Registered Nurse	Licensed Practical Nurse
Renewal Fee	44	44
HEAL-WA Surcharge	16	16
Nursing Center Surcharge	5	5
Late Renewal Penalty	45	45
Expired License Reissuance	70	70
<b>Total</b>	<b>180</b>	<b>180</b>

**Inactive License Renewal**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
Renewal Fee	44	44	40
HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
<b>Total</b>	<b>65</b>	<b>65</b>	<b>40</b>

**Inactive License Renewal—Late Renewal - Up to One Year Past the Expiration**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
Renewal Fee	44	44	40
HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
Late Renewal Penalty	45	45	40
<b>Total</b>	<b>110</b>	<b>110</b>	<b>80</b>

**Inactive License Renewal—Late Renewal - One Year or More Expired**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
Renewal Fee	44	44	40
HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
Late Renewal Penalty	45	45	40
Expired License Reissuance	40	40	40
<b>Total</b>	<b>150</b>	<b>150</b>	<b>120</b>

**Other fees**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner	Nursing Technician
Duplicate licensee or registration	20	20	20	15
Verification of licensure	25	25	25	25

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 17-07-038, § 246-840-990, filed 3/8/17, effective 7/1/17. Statutory Authority: 2013 2nd sp.s. c 4, 2013 c 249 § 219, RCW 18.130.250, and 43.70.250. WSR 13-24-097, § 246-840-990, filed 12/3/13, effective 2/1/14. Statutory Authority: RCW 43.70.110 (3)(c) and 43.70.250. WSR 12-19-088, § 246-840-990, filed 9/18/12, effective 11/1/12. Statutory Authority: RCW 43.70.110, 43.70.250, and 2010 c 37. WSR 10-19-071, § 246-840-990, filed 9/16/10, effective 10/15/10. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-840-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.010, 43.70.250, and 2005 c 268. WSR 05-20-107, § 246-840-990, filed 10/5/05, effective 11/5/05. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-840-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250 and chapter 18.79 RCW. WSR 04-04-054, § 246-840-990, filed 1/30/04, effective 1/30/04. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-840-990, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.79 RCW. WSR 97-23-075, § 246-840-990, filed 11/19/97, effective 1/12/98. Statutory Authority: RCW 18.79.200. WSR 95-12-021, § 246-840-990, filed 5/31/95, effective 7/1/95.]

**WSR 22-10-107**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed May 4, 2022, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-055.

Title of Rule and Other Identifying Information: Safety and health discrimination protections (ESHB 1097): Chapter 296-360 WAC, Discrimination.

Hearing Location(s): On June 8, 2022, at 9:00 a.m. Join virtually via Zoom <https://lni-wa-gov.zoom.us/j/87608567723?pwd=cXdrQzVyaHdrR2V0alhOTGdPaEt6QT09>; or join by phone 253-215-8782, Meeting ID 876 0856 7723, Passcode 01697458. The hearing will start at 9:00 a.m. and continue until all oral comments are received.

Date of Intended Adoption: July 1, 2022.

Submit Written Comments to: Josefina Magana, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email [Josefina.Magana@lni.wa.gov](mailto:Josefina.Magana@lni.wa.gov), fax 360-902-5619, by June 15, 2022.

Assistance for Persons with Disabilities: Contact Josefina Magana, phone 360-902-4233, email [Josefina.Magana@lni.wa.gov](mailto:Josefina.Magana@lni.wa.gov), by June 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington Industrial Safety and Health Act (WISHA), under chapter 49.17 RCW, protects workers from discrimination or retaliation for exercising their rights under WISHA to a safety and healthful workplace. 2021's ESHB 1097 made changes to the WISHA discrimination protections under RCW 49.17.160. The changes to RCW 49.17.160 under ESHB 1097 go into effect on July 1, 2022.

Under ESHB 1097, L&I's DOSH has the authority to issue administrative orders when investigations of discrimination complaints find sufficient evidence that an employer violated RCW 49.17.160. The proposed rules update chapter 296-360 WAC, Discrimination, to include a process for issuance of citations and notices of assessments to order relief to the worker and penalties to the employer and a process for employer and employee appeals of the citation and notice of assessment. Other updates under the proposed rule needed to implement ESHB 1097 include changing the time to file a safety and health discrimination complaint from 30 to 90 days and clarifying the definition of discrimination.

The proposed rules also make changes to align with Washington state case law specific to "substantial factor" causation test, where a violation of RCW 49.17.160 occurs when an employee's engagement in protected activity was a substantial factor in the employer's decision for the adverse action. The current rule is based on the Occupational Safety and Health Administration's (OSHA) interpretative rules applying federal case law to discrimination under Section 11(c) of the Occupational Safety and Health Act (OSH Act). The change to apply Washington case law is necessary to ensure DOSH applies the appropriate standard used by Washington courts in its investigations and orders issued under ESHB 1097.

The proposed rule also makes changes to clarify the rule.

**Amended Sections:**

**WAC 296-360-005 Definitions:**

- Adds definitions of "department," "director," "employ," "employee," and "person."

**WAC 296-360-010 Introduction:**

- Streamlines the introduction.

**WAC 296-360-020 General requirements of RCW 49.17.160 of WISHA:**

- Removes redundant language and clarifies the intent of the chapter.

**WAC 296-360-030 Filing a complaint of discrimination:**

- Provides clarity on where to submit claims.
- Updates timing for filing complaints to align with RCW 49.17.160.
- Adds example of circumstances that may justify tolling of the time to file a complaint to be consistent with the examples in OSHA's rule under 29 C.F.R. 1977.15.

**WAC 296-360-040 Notification of assistant director's determination:**

- Changes made to update how L&I will make determinations if discrimination occurred and how employers and complainants will [be] notified of that determination, including the issuance of orders.
- Updates mirror changes made in RCW 49.17.160.

**WAC 296-360-050 Withdrawal of complaint:**

- Rearranges existing language to provide clarity.

**WAC 296-360-060 Arbitration or other agency proceedings**

- Minor language changes for clarity purposes.

**WAC 296-360-070 Persons prohibited from discriminating:**

- Removes court case citation to avoid citing cases that might be challenged or changed in the future. The underlying law from the case still applies.

**WAC 296-360-080 - Persons protected by RCW 49.17.160:**

- Minor language changes for clarity purposes.
- Removes court case citation to avoid citing cases that might be challenged or changed in the future. The underlying law from the case still applies.

**WAC 296-360-090 Unprotected activities distinguished:**

- Amends the language to align with Washington case law.
- Defines "substantial factor."
- Clarifies that the substantial factor analysis is based on the facts in the particular case.

**WAC 296-360-150 Discrimination because of exercise of right afforded by WISHA—Refusal to work in an unsafe condition:**

- Minor language changes for clarity purposes.

**WAC 296-360-160 Payment of damages to employee discriminated against:**

- Minor language changes for clarity purposes.

**New Sections:****WAC 296-360-045 Appropriate relief for violations of RCW 49.17.160:**



- Restates what relief can be granted to a complainant when a violation of RCW 49.17.160 which now includes civil penalties.

**WAC 296-360-175 Penalties for violations of RCW 49.17.160:**

- Establishes civil penalties the L&I may assess if a violation of RCW 49.17.160 occurs.

**WAC 296-360-180 Appeals of citations and notices of assessments:**

- Restates how an employer and a complainant can appeal a notice of assessment, where a violation is found, and the relief granted to the complainant.

Reasons Supporting Proposal: The Washington state legislature updated RCW 49.17.160 in 2021, changing how L&I handles complaints alleging discrimination, timing for when complaints and appeals must be made, allowing for civil penalties for violations and recognized that discrimination can be alleged when a workplace culture disincentives employees from raising safety and health concerns. The proposal is necessary to align current L&I rules with changes made under ESHB 1097 and ensure employers and complainants know their rights and responsibilities.

The proposed rules also make changes to align with Washington state case law specific to "substantial factor" causation test, where a violation of RCW 49.17.160 occurs when an employee's engagement in protected activity was a substantial factor in the employer's decision for the adverse action. This change is necessary to ensure DOSH applies the appropriate standard used by Washington courts in its investigations and orders issued under ESHB 1097. The current language under WAC 296-360-090 is based on OSHA's discrimination rule under 29 C.F.R. 1977.6 interpreting Section 11(c) of the OSH Act. Currently, WAC 296-360-090 identifies two ways in which a causal connection between protected activity and adverse action could be established: (1) If protected activity was a substantial reason for the adverse action; or (2) if the adverse action would not have taken place "but for" engagement in protected activity. In September 2021, OSHA amended 29 C.F.R. 1977.6 to clarify that the test for showing a nexus between protected activity and adverse action is "but-for" causation only, citing United States Supreme Court cases interpreting discrimination statutes that address adverse actions that occurs "because of" an employee's engagement in a protected activity, 86 F.R. 49472, September 3, 2021. However, the Washington state supreme court has held that the "substantial factor" test is the appropriate test for discrimination cases in Washington. *Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46, 821 P.2d 18, (1991) (discrimination based on filing workers' compensation claim), *Mackay v. Acorn Custom Cabinetry, Inc.*, 127 Wn.2d 302, 898 P.2d 284 (1995) (discrimination based on gender.); *Scrivener v. Clark College*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014) (discrimination based on age); *Allison v. Housing Authority of Seattle*, 118 Wn.2d 79, 95-96, 821 P.2d 34 (1991) (case of age discrimination in housing.) The discrimination statutes in the Washington supreme court cases references above prohibit discrimination "because of" a protected activity or protected status. As a remedial statute, WISHA and its regulations are liberally construed to carry out its purpose. *Adkins v. Aluminum Co. of America*, 110 Wn.2d 128, 146, 750 P.2d 1257 (1988).

Statutory Authority for Adoption: RCW 49.17.040 and 49.17.050.

Statute Being Implemented: RCW 49.17.160; section 3, chapter 253, Laws of 2021.

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

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt under RCW 34.05.328 (5)(b)(ii) relates to internal governmental operations, 34.05.328 (5)(b)(iii) by incorporating statutory language without material change, and 34.05.328 (5)(b)(iv) provides housekeeping and clarifying edits. Changes setting forth interpretation of applicable Washington case law to the statute are interpretive rules under RCW 34.05.328 (5)(c)(ii) and not considered significant legislative rules per RCW 34.05.328 (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 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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 rule applies to all employers in Washington state but does not impose any costs. The rule establishes a penalty for non-compliance but that is only in the event that a violation has been found. Other changes set forth interpretation of applicable Washington case law to the statute interpretive rules under RCW 34.05.328 (5)(c)(ii).

May 4, 2022  
Joel Sacks  
Director

**OTS-3642.3**

AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-005 Definitions.** For the purposes of this chapter.

- (1) "Assistant director" ~~((-))~~ means the assistant director for the division of ((consultation and compliance)) occupational safety and health at the department of labor and industries.
- (2) "Department" means the department of labor and industries.
- ~~((2))~~ (3) "Division" ~~((-))~~ or "DOSH" means the division of ((consultation and compliance)) occupational safety and health of the department of labor and industries.
- (4) "Director" means the director of the department of labor and industries.
- (5) "Employ" has the same meaning as in WAC 296-360-080.
- (6) "Employee" has the same meaning as in RCW 49.17.020.
- (7) "Person" has the same meaning as in RCW 49.17.020.
- (8) "Repeat violation" means a violation where the employer has been cited one or more times previously for violation of RCW 49.17.160 and the prior violation has become a final order no more than five years prior to the employer committed the violation being cited.

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-005, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-005, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-010 Introduction.** ~~((1) Chapter 49.17 RCW, the Washington Industrial Safety and Health Act (WISHA), is designed to regulate employment conditions affecting industrial safety and health and to achieve safer and healthier work places throughout the state. WISHA requires every person who has employees to furnish each of his or her employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and to comply with industrial safety and health standards promulgated under WISHA.~~

~~(2) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under WISHA. Effective implementation of WISHA and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives.~~

~~(3)) This chapter deals ((essentially)) with the rights of employees afforded under RCW 49.17.160 ((. RCW 49.17.160)), which prohibits reprisals, in any form, against employees who exercise rights under WISHA. The purpose of this chapter is to make available in one place interpretations of the various provisions of ((section 16 of WISHA)) RCW 49.17.160 that will guide the assistant director in the performance of ((his or her)) their duties ((thereunder)).~~

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-010, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-020 General requirements of RCW 49.17.160 of WISHA.**

~~((RCW 49.17.160 provides that))~~ (1) No person shall discharge or in any manner discriminate against any employee because the employee has:

- (a) Filed any complaint under or related to WISHA((τ));
- (b) Instituted or caused to be instituted any proceeding under or related to WISHA((τ));
- (c) Testified or is about to testify in any proceeding under or related to WISHA((τ)); or
- (d) Exercised on ((his or her)) their own behalf or on behalf of others any right afforded by WISHA.

(2) Any employee who believes ((that he/she has)) they have been discriminated against in violation of ((section 16 of WISHA may, within thirty days after the violation occurs, file a complaint with the assistant director alleging the violation. The division shall investigate the complaint and, if the assistant director determines that section 16 of WISHA has been violated, the division may bring a civil action against the violator in superior court. The suit may ask the court to restrain violations of RCW 49.17.160 and to grant other appropriate relief, including rehiring or reinstating the employee to his or her former position with back pay)) RCW 49.17.160 may file a complaint alleging a violation, within 90 days after such violation.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-020, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 82-13-045, filed 6/11/82)

**WAC 296-360-030 Filing a complaint of discrimination.** (1) Who may file. A complaint ~~((of RCW 49.17.160))~~ alleging discrimination may be filed by the employee ~~((him or herself)),~~ or by ((a)) the employee's authorized representative ~~((authorized to do so on his or her behalf)).~~

(2) Nature of filing. No particular form of complaint is required.

(3) Place of filing. The complaint should be filed with the division by the following methods:

(a) Department website: <https://lni.wa.gov/workers-rights/workplace-complaints/discrimination-in-the-workplace>.

(b) In person:

Department of Labor and Industries  
DOSH-Discrimination Program  
7273 Linderson Way S.W.  
Tumwater, WA 98501

(c) Mail:

Department of Labor and Industries  
DOSH-Discrimination Program  
P.O. Box 44600  
Olympia, WA 98504-4600; or

(d) Phone: 360-902-6088 or 1-800-423-7233.

(4) Time for filing. (~~(RCW 49.17.160(3) provides that an employee who believes that he or she has been discriminated against in violation of RCW 49.17.160 "may, within thirty days after such violation occurs" file a complaint with the assistant director. A major purpose of the thirty-day period is to allow the assistant director to decline to entertain complaints that have become stale. Accordingly, the division will presume that complaints not filed within thirty days of an alleged violation are untimely. There may be circumstances, however,))~~ The complaint must be filed timely as stated in WAC 296-360-020(2). Circumstances may exist that justify tolling, meaning pause, delay, or extend, the ((thirty-day)) 90-day period on recognized equitable principles or because strongly extenuating circumstances exist, e.g., where the employer has concealed, or misled the employee regarding the grounds for, discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the ((thirty-day)) 90-day period, the division ((shall)) will not accept untimely complaints.

[Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 82-13-045 (Order 82-22), § 296-360-030, filed 6/11/82. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-030, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-040 Discrimination, determination, and notification ((of assistant director's determination)).** (1) (~~(RCW 49.17.160(3) provides that))~~ The assistant director ((is to)) must determine if a violation of RCW 49.17.160 has occurred, or whether there was insufficient evidence to determine if a violation occurred.

(2) The assistant director will notify a complainant and their employer of the determination made under subsection (1) of this section within ((ninety)) 90 days of receipt of the complaint ((of his determination whether prohibited discrimination has occurred. This ninety-day provision is directory, not mandatory. Although)). The department may extend the 90-day period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(a) Violation occurred. If the assistant director determines that RCW 49.17.160 has been violated, the assistant director will issue a citation and notice of assessment describing the violation to the employer, ordering all appropriate relief as described in WAC 296-360-045, and may assess a civil penalty as described in WAC 296-360-175. Complainants and employers have the right to appeal the citation and notice of assessment in accordance with WAC 296-360-180.

(b) Insufficient evidence. If the assistant director finds there is insufficient evidence to determine that a violation occurred, the assistant director will issue a letter of closure and the employee may institute the action on their own behalf within 30 days of such determination as allowed in RCW 49.17.160.

(i) The complainant may file a written request for review by the director within 15 working days of receipt of the determination. The request for director review must set forth the basis for the request.

The request must be filed by mail to the address in WAC 296-360-030 (3)(c) or in-person to the address in WAC 296-360-030 (3)(b).

(ii) Upon review the director may set aside the assistant director's determination and issue a citation and notice of assessment, remand the matter for further investigation, or affirm the determination of the assistant director.

(3) Every effort will be made to notify complainants of the ((assistant director's determination within ninety days, there may be instances when it is not possible to do so)) determination using a method of mailing that can be tracked or delivery that can be confirmed.

((2) If a complainant receives a determination from the assistant director that prohibited discrimination has not occurred, the complainant may file a written request for review by the director within fifteen working days of receipt of the determination. The request for review must set forth the basis for the request. The request shall be filed by mailing or delivering the request to the Director of Labor and Industries, P.O. Box 44000, Olympia, Washington 98504-4000. Upon review the director may set aside the assistant director's determination, remand the matter for further investigation, or affirm the determination of the assistant director. The director shall notify the complainant of the decision after review.))

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-040, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 85-10-004 (Order 85-09), § 296-360-040, filed 4/19/85. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-040, filed 11/13/80.]

#### NEW SECTION

##### **WAC 296-360-045 Appropriate relief for violations of RCW**

**49.17.160.** (1) A citation and notice of assessment issued for a violation of RCW 49.17.160 as required by WAC 296-360-040, must include appropriate relief which may include, but is not limited to, the following:

(a) Restoring the complainant to the position of employment held by the complainant when the discrimination occurred, or restoring the complainant to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment; and

(b) Ordering the employer to make payable to the complainant earnings that the complainant did not receive due to the employer's discriminatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee.

(2) A civil penalty may be issued in accordance with WAC 296-360-175, Penalties for violations of RCW 49.17.160.

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AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-050 Withdrawal of complaint.** Enforcing the provisions of RCW 49.17.160 is not only a matter of protecting rights of individual employees, but also of protecting the public interest. Attempts by an employee to withdraw a filed complaint will not necessarily result in termination of the division's investigation. A voluntary and uncoerced request from a complainant to withdraw a complaint will be given careful consideration; however, the division's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. (~~(However, a voluntary and uncoerced request from a complainant to withdraw his/her complaint shall generally be accepted.)~~)

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-050, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-050, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-060 Arbitration or other agency proceedings.** (1) General.

(a) An employee who files a complaint under RCW 49.17.160 may pursue remedies under grievance arbitration proceedings in collective bargaining agreements, and may also resort to other agencies, such as the National Labor Relations Board, for relief. The division's jurisdiction to entertain RCW 49.17.160 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The division may file an action in superior court regardless of the pendency of other proceedings.

(b) (~~(Where it is possible, however,)~~) The division favors voluntary resolution, where possible, of disputes under procedures in collective bargaining agreements. (~~(Also,)~~) The division should defer to the jurisdiction of other forums established to resolve disputes that may also be related to RCW 49.17.160 complaints. Thus, where a complainant is pursuing remedies other than those provided by RCW 49.17.160 it may be proper to postpone the assistant director's determination whether discrimination has occurred, and defer to the results of such proceedings.

(2) Postponement of determination. Postponement of determination is justified where the rights asserted in other proceedings are substantially the same as rights under RCW 49.17.160 and those proceedings are not likely to violate the rights guaranteed by RCW 49.17.160. The factual issues in the (~~(such)~~) proceedings must be substantially the same as those raised by the RCW 49.17.160 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

(3) Deferral to outcome of other proceedings. Determinations to defer to the outcome of another proceeding (~~(begun)~~) initiated by a complainant must be made after careful scrutiny. It must be clear that the proceeding dealt adequately with all factual issues, that it was fair, regular, and free of procedural infirmities, and that its outcome did not violate the purpose and policy of WISHA. If another ac-

tion ((~~begun~~)) initiated by a complainant is dismissed without an adjudicatory hearing on the merits, the division will not necessarily regard the dismissal as determinative of the merits of the RCW 49.17.160 complaint.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-060, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-070 Persons prohibited from discriminating.** RCW 49.17.160 specifically states that "no person shall discharge or in any manner discriminate against any employee" because the employee has exercised rights under WISHA. RCW 49.17.020(5), defines "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons." Consequently, the prohibitions of RCW 49.17.160 are not limited to actions taken by employers against their own employees. A person may be charged with discriminating against an employee of another person. RCW 49.17.160 extends to such entities as organizations representing employees in collective bargaining, employment agencies, or any other person in a position to discriminate against an employee. ((See ~~Meek v. United States, 136 F.2d 679 (6th Cir., 1943); Bowe v. Judson C. Burns, 137 F.2d 37 (3rd Cir., 1943).~~))

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-070, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-080 Persons protected by RCW 49.17.160.** (1) All employees are afforded the full protection of RCW 49.17.160. WISHA defines an employee as "an employee of an employer who is employed in a business of ((~~his/her~~)) their employer which affects commerce." RCW 49.17.020(4). WISHA does not define "employ"; however, the broad remedial nature of WISHA demonstrates a clear intent that the existence of an employment relationship, for purposes of RCW 49.17.160, is to be based upon economic realities rather than upon common law doctrines and concepts. ((See ~~U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).~~))

(2) For purposes of RCW 49.17.160, an applicant for employment could be considered an employee. ((See ~~NLRB v. Lamar Creamery, 246 F.2d 8 (5th Cir., 1957).~~))

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-080, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-080, filed 11/13/80.]



AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-090 Unprotected activities distinguished.** (~~(1) An employer or others may base actions that adversely affect an employee upon nondiscriminatory grounds. An employee's engagement in activities protected by WISHA does not automatically render him/her immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations. See NLRB v. Dixie Motor Coach Corp. 128 F.2d 201 (5th Cir., 1942).~~

~~(2) To establish a violation of RCW 49.17.160, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" the employee's engagement in protected activity, RCW 49.17.160 has been violated.)~~ If the employee's engagement in protected activities was a substantial factor in bringing about the employer's decision, RCW 49.17.160 has been violated. "Substantial factor" means a significant motivating factor in bringing about the employer's decision. "Substantial factor" does not mean the only factor or the main factor in the challenged act or decision. Ultimately, the issue as to whether an employee's engagement in protected activities was a substantial factor for the discharge or other adverse action is determined on the basis of the facts in the particular case.

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-090, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-090, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-150 Discrimination because of exercise of right afforded by WISHA—Refusal to work in an unsafe condition.** (1) Review of WISHA and examination of the legislative history discloses that, as a general matter, WISHA grants no specific right to employees to walk off the job because of potential unsafe conditions at the work place. A hazardous condition that may violate WISHA will ordinarily be corrected by the employer, once brought to its attention. If the employer does not correct a hazard, or if there is a dispute about the existence of a hazard, the employee normally can ask the division to inspect the work place pursuant to RCW 49.17.110, or can seek help from other public agencies that have responsibility for safety and health. Under such circumstances, an employer would not violate RCW 49.17.160 by disciplining an employee who refuses to work because of an alleged safety or health hazard.

(2) Occasions arise, however, when an employee is confronted with a choice between not performing assigned tasks or subjecting him- or herself to serious injury or death arising from a hazard at the work place. If the employee, with no reasonable alternative, refuses in good faith to expose him- or herself to the dangerous condition, he or she is protected against subsequent discrimination.

(3) An employee's refusal to work is protected if he or she meets the following requirements:

(a) The refusal to work must be in good faith, and must not be a disguised attempt to harass the employer or disrupt the employer's business;

(b) The hazard causing the employee's apprehension of death or injury must be such that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury; and

(c) There must be insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.

(4) As indicated in subsection (3) of this section, an employee's refusal to work is not protected unless it is a good faith response to a hazardous condition. To determine whether an employee has acted in good faith, the division will consider, among other factors, whether the employee:

(a) Asked the employer to correct the hazard;

(b) Asked for other work;

(c) Remained on the job until ordered to leave by the employer;

or

(d) Informed the employer that, if the hazard was not corrected, the employee would refuse to work.

The lack of one or more of these factors (~~shall~~) must not necessarily preclude a finding of good faith if other factors do establish good faith. The division will also consider whether the employer knew that the hazard could cause serious injury or death, or that the hazard was prescribed by a specific safety standard promulgated under WISHA or any other law that relates to the safety and health of a place of employment.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-150, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-160 Payment of damages to employee discriminated against.** (1) If an employer discriminates against an employee such that the employee earns less than he or she would have earned absent the discrimination, the employer (~~shall~~) must pay the employee the difference between the wages that the employee would have earned absent the discrimination and the wages the employee actually earned after the discrimination.

(2) If an employer discriminates against an employee for a refusal to work that is protected under WAC 296-360-150, the employer need not pay the employee's wages for the time spent fixing the hazard, or that would have been spent fixing the hazard, if the employer (a) had to or would have had to shut down the job to make the repair and (b) had not other work the employee could have done.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-160, filed 11/13/80.]

NEW SECTION**WAC 296-360-175 Penalties for violations of RCW 49.17.160.**

(1) (a) Penalties for violations of RCW 49.17.160 are as follows:

Employer Size	Penalty Amount Per Violation
1 - 25	\$5,000
26 - 100	\$7,000
101 - 250	\$10,000
251+	\$14,000

(b) Employer size is determined by the maximum number of workers employed in the 12-month period since the alleged violation occurred.

(2) Repeat violations. Penalty amounts will increase for repeat violations. The number of repeated violations will be calculated based on the number of violations found within the last five years.

(a) The first repeat violation the base penalty amount under subsection (1) (b) of this section will be multiplied by three.

(b) Any violation above a single reoccurrence the base penalty under subsection (1) (b) of this section will be multiplied by five.

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NEW SECTION**WAC 296-360-180 Appeals of citations and notices of assessments.**

(1) WAC 296-900-17005 and 296-900-17010 apply to appeals described in this section. The remainder of the section outlines the timelines for notifying the department about appeals of the citation and notice of assessment issued by the department.

(2) Citation and notice of assessment appeal. Both the employer and the complainant have a right to appeal determinations made under WAC 296-360-040.

(a) Notification to the department.

(i) An employer has 30 calendar days of receipt of the citation and notice of assessment to notify the department that the employer wishes to appeal the citation or notice of assessment; and

(ii) The complainant has 15 working days from receipt of the citation and notice of assessment to notify the department that the complainant wishes to appeal the order of appropriate relief stated in the notice of assessment.

(b) The citation and notice of assessment will become a final order of the department, not subject to review by any court or agency, if the department does not receive notification of appeal from the employer or complainant as stated in (a) of this subsection.

(3) The department may reassume jurisdiction according to the timeline, process for hearing, and issuance of corrective notices of redetermination under RCW 49.17.140(4) upon receiving notice of appeal from the employer, employee, or both.

(a) The redetermination will become the final order subject to direct appeal by an employer or complainant to the board of industrial insurance appeals within 15 working days of such redetermination with service of notice of appeal upon the director.

(b) In the event that the department does not reassume jurisdiction, the department must notify the state board of industrial insurance appeals of all notifications of intention to appeal the citation and notice of assessment and certify a full copy of the record in such appeal matters to the board.

(4) A notice of appeal filed under this section will stay the effectiveness of any citation or notice of assessment except orders of reinstatement pending review by the board of industrial appeals.

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