

## WSR 22-14-023

## PROPOSED RULES

## DEPARTMENT OF COMMERCE

[Filed June 24, 2022, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-069.

Title of Rule and Other Identifying Information: Establish a later effective date for the water heater standard under WAC 194-24-180.

Hearing Location(s): On August 30, 2022, at 10:00 a.m., virtual. Remote and written testimony will be accepted.

Date of Intended Adoption: September 20, 2022.

Submit Written Comments to: Liz Reichart, 1011 Plum Street S.E., Olympia, WA 98504, email appliances@commerce.wa.gov, by August 30, 2022.

Assistance for Persons with Disabilities: Contact Steven Hershkowitz, phone 360-688-4006, email steven.hershkowitz@commerce.wa.gov, by August 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates WAC 194-24-180 to have an effective date of January 1, 2023. In effect, CTA-2045 modules will be required components of electric storage water heaters manufactured on or after January 1, 2023.

Reasons Supporting Proposal: Commerce previously adopted multiple emergency rules suspending the effective date of WAC 194-24-180 Electric storage water heaters, due to an inability of manufacturers to obtain necessary parts for the required modular communications port (CTA-2045). Based on the currently adopted emergency rule, the suspension is effective until June 29, 2022. In light of continuing economic and supply chain disruptions caused by the COVID-19 pandemic, commerce has determined that a further delay to the effective date is warranted. Commerce intends to amend WAC 194-24-180 to establish a reasonable effective date for WAC 194-24-180 on a permanent basis. The inability of manufacturers to obtain necessary parts is caused by supply chain disruptions resulting from the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 19.260.070(7), 19.260.080(2).

Statute Being Implemented: Chapter 19.260 RCW.

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

Name of Proponent: Washington department of commerce, public.

Name of Agency Personnel Responsible for Drafting: Liz Reichart, 1011 Plum Street S.E., Olympia, WA 98504, 360-515-8194; Implementation and Enforcement: Washington Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98504, 360-407-6000.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not a listed agency in RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The amendment would delay the standard, exempting manufacturers from the communications module requirement for an extended period of time, rather than imposing an additional cost.

June 24, 2022  
David Pringle  
Rules Coordinator

OTS-3638.3

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

**WAC 194-24-180 Electric storage water heaters.** (1) **Scope.** This rule applies to new electric storage water heaters manufactured on or after January 1, ~~((2021))~~ 2023. ~~((The effective date of the rule is suspended until January 1, 2022, for electric storage water heaters other than heat pump type water heaters.))~~

(2) **Standard.** Electric storage water heaters must have a modular demand response communications port compliant with:

(a) The March 2018 version of the ANSI/CTA-2045-A communication interface standard, or a standard determined by the department to be equivalent; and

(b) The March 2018 version of the ANSI/CTA-2045-A application layer requirements.

The interface standard and application layer requirements required in this subsection are the versions established in March 2018.

(3) Upon written request by a manufacturer, the department will determine whether an alternative communications port and communication interface standard are equivalent for the purposes of subsection (2) of this section.

(a) Any requested alternative must use a standard that is open and widely available and must provide the demand response functions provided using the standards identified in subsection (2) of this section.

(b) A request for designation of a standard must provide technical documentation demonstrating that the standard satisfies the requirements in (a) of this subsection and must describe any industry or stakeholder process used in developing the standard. The department will provide reasonable opportunity for input by utilities, manufacturers, technical experts and other interested stakeholders prior to determining whether the proposed standard is equivalent. The department will make available on a publicly accessible website any standard that it determines to be equivalent.

(4) **Testing.** There is no test method required for this product.

(5) **Listing.** There is no listing requirement for this product.

(6) **Marking.** Every unit of every electric storage water heater must have a label or marking indicating compliance with the standard in this section. The format and content of the label or marking must be approved in advance by the department.

[Statutory Authority: RCW 19.260.070. WSR 20-03-013, § 194-24-180, filed 1/6/20, effective 2/6/20.]

**WSR 22-14-039**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed June 27, 2022, 1:29 p.m.]

Supplemental Notice to WSR 22-12-079.

Preproposal statement of inquiry was filed as WSR 22-06-011.

Title of Rule and Other Identifying Information: The department is proposing to repeal and amend sections of chapter 388-71 WAC, Home and community services and programs; and chapter 388-113 WAC, Disqualifying crimes and negative actions.

Hearing Location(s): On August 9, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than August 10, 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 August 9, 2022.

Assistance for Persons with Disabilities: Contact 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], by 5:00 p.m. on July 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is filing this supplemental CR-102 to include the repeal of WAC 388-71-0515 What are the responsibilities of an individual provider when providing services to a client? This section was inadvertently missed when filing the CR-102 proposal under WSR 22-12-079.

The department is proposing to repeal and amend sections of chapters 388-71 and 388-113 WAC, because of the implementation of the consumer directed employer (CDE) with the passage of SB 6199 in 2018, and the change from individuals providers contracted with the department to individual providers employed by the CDE. The current rules will no longer be applicable once all individual providers have been hired by the CDE.

Reasons Supporting Proposal: One section was inadvertently missed when the department filed the CR-102 proposal under WSR 22-12-079.

Statutory Authority for Adoption: RCW 74.08.090 and 74.39A.250.

Statute Being Implemented: RCW 74.08.090 and 74.39A.250.

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

Name of Proponent: [Not provided by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, 360-742-2071.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule and is exempt pursuant to RCW 34.05.328 (5) (b) (iv) (rules that only correct typographical er-

rors, make address or name changes, or clarify language of a rule without changing its effect).

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)(iv) (rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect).

June 27, 2022  
Katherine I. Vasquez  
Rules Coordinator

#### SHS-4923.4

AMENDATORY SECTION (Amending WSR 22-06-088, filed 3/1/22, effective 4/1/22)

**WAC 388-71-0503 What definitions apply to WAC 388-71-0500 through WAC 388-71-05640? "Agency provider"** means a long-term care worker who works for a home care agency.

**"Area agencies on aging (AAA)"** means a contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs and to provide case management services and supports to individuals (~~(eighteen)~~) 18 and older who receive medicaid-funded LTC in their own homes.

**"Applicant"** means a person who is in the process of becoming an in-home long-term care worker.

**"Background check"** means a name and date of birth check, or a fingerprint-based background check, or both.

**"Background check result"** is defined in WAC 388-113-0010.

**"Background check central unit (BCCU)"** means the DSHS entity responsible for conducting background checks for the department.

**"Character, competence, and suitability determination (CC&S)"** is defined in WAC 388-113-0050.

**"Client"** means an individual receiving medicaid-funded in-home long term services from the department.

**"Department"** means the department of social and health services or its designees.

**"Family member"** includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

**"Fingerprint-based background check"** means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

**"Home care agency (HCA)"** means an entity that is licensed by the department of health to provide home care services through a contract arrangement with the department to clients in places of permanent or temporary residence.

**"Home care agency long-term care worker"** means a long-term care worker who works for a home care agency.

~~(("Individual provider (IP)" as defined in RCW 74.39A.240 limited to individual providers contracted with the department.))~~

"Long-term care worker" as defined in RCW 74.39A.009 (17) but limited to ~~((individual providers contracted with the department or))~~ caregivers hired by the home care agency.

"Name and date of birth check" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

"Negative actions" are listed in WAC 388-113-0030.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074. WSR 22-06-088, § 388-71-0503, filed 3/1/22, effective 4/1/22. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0503, filed 8/30/21, effective 10/1/21.]

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

**WAC 388-71-0510 What are the qualifications of a LTC worker ~~((providing in-home services))~~ under this chapter?** In order to be qualified as a long-term care worker, an applicant must:

(1) Not have a disqualifying crime or negative action under chapter 388-113 WAC based on a completed background check;

(2) Not be disqualified based on a character, competence, and suitability determination;

(3) Complete training and certification requirements listed in WAC 388-71-0520 and WAC 388-71-0523; and

(4) If required, have an active home care aide certification or other qualifying credential by the department of health~~((†))~~

~~((5) In addition to the qualifications listed in subsections (1) through (4) of this section, an individual provider must:~~

~~(a) Have a current and valid individual provider services contract with DSHS to provide personal care services;~~

~~(b) Pass the federal exclusion list screening;~~

~~(c) Not have credible allegations of fraud which are pending investigation, unless they fit within the exceptions listed in 42 C.F.R. 455.23;~~

~~(d) Be eighteen years of age or older;~~

~~(e) Provide the department with a valid: Social Security card and picture ID, as determined by DSHS)).~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0510, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-71-0510, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0510, filed 12/20/12, effective 1/20/13. Statutory Authority: 2004 c 276 § 206

(6) (b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. WSR 04-16-029, § 388-71-0510, filed

7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0510, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0510, filed 1/13/00, effective 2/13/00.]

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

**WAC 388-71-0511 When is a background check required of an ((individual provider or)) agency provider?** ((1) Individual providers are required to complete and pass a name and date of birth background check before initial contracting with the department.)

((2)) (1) Agency providers are required to complete and pass a name and date of birth background check prior to working with a client.

((3)) (2) ((Individual providers and a)) Agency provider workers are required to complete and pass a name and date of birth background check:

(a) Every two years; and

(b) Any time ((the department or)) the home care agency employer requests a new check.

((4)) (3) In addition to the name and date of birth background check, ((individual providers and)) agency providers are required to complete and pass a fingerprint-based background check:

(a) If hired after January 7, 2012, and in accordance with provisional hire rules in WAC 388-113-0109;

(b) If they have lived out of state since the last fingerprint-based background check was completed; or

(c) Any time the ((department or)) home care agency requests a new check.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0511, filed 8/30/21, effective 10/1/21.]

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

**WAC 388-71-0513 How does an ((individual provider or)) agency provider complete a background check?** (1) The ((individual provider or)) agency provider must:

(a) Complete the background check authorization form;

(b) Answer all questions on the background check authorization form truthfully;

(c) Obtain a fingerprint-based background check result;

(d) Not have any automatically disqualifying conviction(s), pending charge(s), or negative action(s) as described in chapter 388-113 WAC;

(e) Review the background check results and if necessary provide documents or other information to BCCU to correct the background check results; and

(f) When requested by BCCU, provide additional information in order to complete a background check as mandated by statute.

(2) It is the responsibility of the home care agency to ensure compliance with subsection (1) of this section for its agency providers.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0513, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-71-0513, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0513, filed 12/20/12, effective 1/20/13. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0513, filed 5/4/01, effective 6/4/01.]

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

**WAC 388-71-0520 What are the training requirements for ((an individual provider or)) a home care agency long-term care worker? ((An individual provider or a))** A home care agency long-term care worker, hired on or after January 7, 2012, must meet the training requirements described in WAC 388-71-0836 through 388-71-1006. These training requirements also apply to ((individual providers or)) home care agency long-term care workers who were hired before January 7, 2012, if they did not complete prior training requirements within ((one hundred twenty)) 120 days of hire and they want to be reinstated to work as a long term care worker. These training requirements and certification, if required, must be met prior to reinstating these individuals to work as a long term care worker.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0520, filed 12/20/12, effective 1/20/13. Statutory Authority: 2008 c 146, RCW 18.20.090, 74.08.090, chapter 70.128 RCW. WSR 09-03-066, § 388-71-0520, filed 1/14/09, effective 2/14/09. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-71-0520, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. WSR 04-02-001, § 388-71-0520, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. WSR 02-10-117, § 388-71-0520, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0520, filed 1/13/00, effective 2/13/00.]

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

**WAC 388-71-0523 What are the training and certification requirements for individual providers and home care agency long-term care workers?** The following chart provides a summary of the training and certification requirements for individual providers and home care agency long-term care workers, including criteria for those providers working limited hours for one person, caring ~~((for only))~~ only for one's child or parent, and providing respite services ~~only((-))~~ :

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) <u>Required credential</u>
(1) An individual provider or home care agency long-term care worker who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).	ARNP, RN, LPN, HCA, CN-A, or other professionals listed in WAC 388-71-0839.	Not required.	Not required.	Not required.	Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required <del>((twelve))</del> <u>12</u> hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.	<u>Not required.</u> Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839.
(2) An individual provider or home care agency long-term care worker with specific employment history.	A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on date of his or her hire. WAC 388-71-0839.	Not required.	Not required.	Not required.	Required. <del>((Twelve))</del> <u>12</u> hours <del>((from July 1, 2012))</del> under WAC 388-71-0990 and 388-71-0991.	Not required.



Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
(3) An individual provider or home care agency long-term care worker.	((Contracted with the department or hired)) <u>Hired</u> by a licensed home care agency or the consumer directed employer to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours ((per)) under WAC 388-71-0860.	Required. ((Seventy)) <u>70</u> hours under WAC 388-71-0870 and 388-71-0875.	Required. ((Twelve)) <u>12</u> hours under WAC 388-71-0990 and 388-71-0991.	Home care aide certification required under WAC 388-71-0975. Home care aide certification required under WAC 388-71-0975 within ((two hundred)) <u>200</u> days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).
(4) An individual provider who works limited hours for one person.	Contracted individual providing ((twenty)) <u>20</u> hours or less of care for one person per calendar month and does not meet the criteria in (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Thirty)) <u>30</u> hours under WAC 388-71-0880.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
<p><del>(((6) WAC 388-71-0523 REGISTER NO.: WSR 21-10-001, filed 8/30/21 PROBLEM: filed new text should (5)))</del> (5) An individual who provides only respite services and works <del>((three hundred))</del> 300 hours or less in any calendar year.</p>	<p>(a) <del>((Contracted))</del> An individual providing only respite care and works no more than <del>((three hundred))</del> 300 hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section. (b) Individual providing only respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p><del>((An individual who provides only respite services and works three hundred or less in any calendar year.))</del> Required. Three hours under WAC 388-71-0860.</p>	<p><del>((Contracted individual providing only respite care and works no more than three hundred hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet the criteria in subsection (7) of this section.))</del> Required. Seven hours under WAC 388-71-0890.</p>	<p><del>((Required. Two hours under WAC 388-71-0860.))</del> Not required.</p>	<p><del>((An individual who provides only respite services and works three hundred hours or less in any calendar year.))</del> Not required.</p>
<p>(6) An individual provider caring only for his or her biological, step, or adoptive adult child.</p>	<p><del>((Contracted))</del> An individual providing care only for his or her adult child that receives services through the developmental disabilities administration and not exempt under (1) or (2) of this section.</p>	<p>Required. Two hours per WAC 388-71-0895.</p>	<p>Required. Three hours under WAC 388-71-0895.</p>	<p>Required. Seven hours under WAC 388-71-0890.</p>	<p>Not required.</p>	<p>Not required.</p>

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
(7) An individual provider caring only for his or her biological, step, or adoptive child, or parent.	((Contracted)) An individual providing care <b>only</b> to his or her child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Thirty)) 30 hours under WAC 388-71-0880.	Required((-An)) for an individual provider caring only for his or her biological, step, or adoptive child or parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for his or her biological, step, or adoptive child under WAC 388-71-1001.	Not required.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0523, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0523, filed 12/20/12, effective 1/20/13.]

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

**WAC 388-113-0010 What definitions apply to this chapter? "Applicant"** means an employee, volunteer, student, intern, licensee, service provider, contractor, or other individual who is the subject of the background check and who will work in a position that may have unsupervised access, as defined in RCW 43.43.830 to minors or vulnerable adults.

**"Authorized entity"** means a service provider, licensee, contractor, or other public or private agency that:

- (1) Is required to conduct background checks under the rules listed in WAC 388-113-0005; and
- (2) Is authorized to conduct the background checks through the background check central unit.

**"Background check"** means a name and date of birth check or a fingerprint-based background check, or both.

**"Background check central unit (BCCU)"** means a division within the department that processes background checks for department authorized service providers and department programs who serve vulnerable individuals across Washington state.

**"Background check result"** means a notification letter produced by the BCCU that describes the outcome of the background check, as described in WAC 388-113-0101, but does not, by itself, include criminal history record information (CHRI).

**"Criminal history record information"** means the information found in the Records of Arrests and Prosecutions (RAP) sheet about a person's arrests and convictions.

**"Department"** means the Washington state department of social and health services and its designees.

**"Drug"** means a:

- (1) Controlled substance as defined in RCW 69.50.101;
- (2) Legend drug, as defined in RCW 69.41.010;
- (3) Precursor drug under Chapter 69.43 RCW; or
- (4) Imitation controlled substance, as defined in RCW 69.52.020.

**"Final finding"** is described in WAC 388-71-0105.

**"Founded"** is defined in WAC 110-30-0020.

**"Fingerprint-based background check"** means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation (FBI).

**"Individual provider (IP)"** as defined in RCW 74.39A.240.

**"Minor"** means any person under the age of ((eighteen)) 18 who is receiving services from a program or facility under chapter 388-71 WAC, Home and community services and programs, chapter 388-106 WAC, Long-term care services, chapter 388-76 WAC, Adult family home minimum licensing requirements, chapter 388-78A WAC, Assisted living facility licensing rules, chapter 388-97 WAC, Nursing homes, chapter 388-101 WAC, Certified community residential services and supports, chapter 388-107 WAC, Licensing requirements for enhanced service facilities, or chapter 388-825 WAC, Developmental disabilities administration service rules.

**"Name and date of birth check"** is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

**"Negative Action"** means actions as described in WAC 388-113-0030.

**"Pending charge"** means a criminal charge for a crime has been filed in a court of law for which the department has not received documentation showing the disposition of the charge.

**"Record of Arrest and Prosecution (RAP sheet)"** means a record kept by law-enforcement authorities of a person's arrests and convictions.

**"Requesting entity"** means the person or entity that requested the background check from the background check central unit (BCCU).

**"Unsupervised access"** is described in RCW 43.43.830(13).

**"Vulnerable adult"** is defined in RCW 74.34.020(17).

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0010, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0010, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 21-23-014, filed 11/4/21, effective 12/5/21)

**WAC 388-113-0020 Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access**

**to adults or minors who are receiving services in a program under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, 388-115, and 388-107 WAC?** (1) Individuals who must satisfy background checks requirements under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, 388-115, and 388-107 WAC must not work in a position that may involve unsupervised access to minors or vulnerable adults if the individual has been convicted of or has a pending charge for any of the following crimes:

- (a) Abandonment of a child;
- (b) Abandonment of a dependent person;
- (c) Abuse or neglect of a child;
- (d) Arson 1;
- (e) Assault 1;
- (f) Assault 2 (less than five years);
- (g) Assault 3 (less than five years);
- (h) Assault 4/simple assault (less than three years);
- (i) Assault 4 domestic violence felony;
- (j) Assault of a child;
- (k) Burglary 1;
- (l) Child buying or selling;
- (m) Child molestation;
- (n) Coercion (less than five years);
- (o) Commercial sexual abuse of a minor/patronizing a juvenile prostitute;
- (p) Communication with a minor for immoral purposes;
- (q) Controlled substance homicide;
- (r) Criminal mistreatment;
- (s) Custodial assault;
- (t) Custodial interference;
- (u) Custodial sexual misconduct;
- (v) Dealing in depictions of minor engaged in sexually explicit conduct;
- (w) Drive-by shooting;
- (x) Drug crimes involving one or more of the following:
- (i) Manufacturing or possession with the intent to manufacture a drug;
- (ii) Delivery or possession with the intent to deliver a drug other than marijuana;
- (iii) Delivery of marijuana (less than three years).
- (y) Endangerment with a controlled substance;
- (z) Extortion 1;
- (aa) Extortion 2 (less than five years);
- (bb) Forgery (less than five years);
- (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- (dd) Identity theft (less than five years);
- (ee) Incendiary devices (possess, manufacture, dispose);
- (ff) Incest;
- (gg) Indecent exposure/public indecency (felony);
- (hh) Indecent liberties;
- (ii) Kidnapping;
- (jj) Luring;
- (kk) Malicious explosion 1;
- (ll) Malicious explosion 2;
- (mm) Malicious harassment;
- (nn) Malicious placement of an explosive 1;

- (oo) Malicious placement of an explosive 2 (less than five years);
- (pp) Malicious placement of imitation device 1 (less than five years);
- (qq) Manslaughter;
- (rr) Murder/aggravated murder;
- (ss) Possess depictions minor engaged in sexual conduct;
- (tt) Promoting pornography;
- (uu) Promoting prostitution 1;
- (vv) Promoting suicide attempt (less than five years);
- (ww) Prostitution (less than three years);
- (xx) Rape;
- (yy) Rape of child;
- (zz) Residential burglary;
- (aaa) Robbery 1;
- (bbb) Robbery 2 (less than five years);
- (ccc) Selling or distributing erotic material to a minor;
- (ddd) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (eee) Sexual exploitation of minors;
- (fff) Sexual misconduct with a minor;
- (ggg) Sexually violating human remains;
- (hhh) Stalking (less than five years);
- (iii) Theft 1 (less than (~~ten~~) 10 years);
- (jjj) Theft from a vulnerable adult 1;
- (kkk) Theft 2 (less than five years);
- (lll) Theft from a vulnerable adult 2 (less than (~~ten~~) 10 years);
- (mmm) Theft 3 (less than three years);
- (nnn) Unlawful imprisonment;
- (ooo) Unlawful use of building for drug purposes (less than five years);
- (ppp) Use of machine gun in a felony;
- (qqq) Vehicular assault;
- (rrr) Violation of temporary restraining order or preliminary injunction involving sexual or physical abuse to a child;
- (sss) Violation of a temporary or permanent vulnerable adult protection order (VAPO) that was based upon abandonment, abuse, financial exploitation, or neglect; and
- (ttt) Voyeurism.

(2) If "(less than (~~ten~~) 10 years)," "(less than five years)," or "(less than three years)" appears after a crime listed in subsection (1) of this section, the individual is not automatically disqualified if the required number of years has passed since the date of the conviction. This will result in a letter from the background check central unit indicating a character, competence, and suitability review is required before allowing unsupervised access to children or vulnerable adults. This provision applies to convictions that the department has determined under subsection (3) of this section as equivalent to a crime listed in subsection (1) of this section once the period of time listed in subsection (1) of this section has passed.

(3) When the department determines that a conviction or pending charge in federal court or in any other court, including state court is equivalent to a Washington state crime that is disqualifying under this section, the equivalent conviction or pending charge is also disqualifying.

(4) In instances where a court has issued a certificate of restoration of opportunity of one of the crimes listed above, according to the procedure in RCW 9.97.020, the conviction is not automatically disqualifying but is subject to a character, competence, and suitability review.

[Statutory Authority: RCW 74.08.090, 43.43.842, and 74.39A.056. WSR 21-23-014, § 388-113-0020, filed 11/4/21, effective 12/5/21; WSR 18-08-066, § 388-113-0020, filed 4/2/18, effective 5/3/18. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0020, filed 6/24/14, effective 7/25/14.]

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

**WAC 388-113-0025 Are there any exceptions to the automatic disqualification under WAC 388-113-0020?**

(1) Under the conditions described in this section, an individual is not automatically disqualified from having unsupervised access to minors and vulnerable adults if he or she:

(a) Has worked continuously for the same employer for whom he or she was working on July 24, 2014; and

(b) Does not have a conviction or pending charge that was automatically disqualifying under rules that were in effect on July 24, 2014; and

(c) Works for a program or facility that operates under chapters 388-71 WAC, (~~Individual providers and~~) home care agencies; 388-115 WAC, individual providers; 388-106 WAC, long-term care services; 388-76 WAC, Adult family ((home)) homes; 388-78A WAC, Assisted living ((facility)) facilities; or 388-97 WAC, Nursing homes and was convicted of, or has a pending charge for:

(i) Residential burglary;

(ii) Unlawful use of building for drug purposes (five or more years);

(iii) Vehicular assault; or

(d) Works for a program or facility that operates under chapter 388-825 WAC (developmental disabilities administration programs) or supported living and was convicted of, or has a pending charge for:

(i) Assault 3;

(ii) Manufacture of a controlled substance;

(iii) Delivery of a controlled substance; or

(iv) Possession of a controlled substance with the intent to manufacture or deliver.

(2) In addition to the requirements under subsection (1) (~~(7)~~) of this section, in order for an individual to be eligible for an exception under this section, the following conditions must also be satisfied:

(a) The conviction date for the crimes listed in (1)(c) and (d) must be before July 25, 2014;

(b) The individual has to continue to work for the same employer; and

(c) The employer or hiring entity must:

(i) Review the individual's character, competence, and suitability to have unsupervised access to minors or to vulnerable adults, and;

(ii) Have documentation on file demonstrating the results of the character, competence, and suitability review; and

(iii) Have documentation on file demonstrating that the individual meets all of the conditions in subsection (2) of this section, including a copy of a background check result letter dated prior to July 25, 2014, indicating the individual was not disqualified from having unsupervised access to minors or vulnerable adults.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, recodified as § 388-113-0025, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0040, filed 6/24/14, effective 7/25/14.]

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-0500	What is the purpose of this section of the chapter?
WAC 388-71-0505	Who hires and supervises an individual provider?
WAC 388-71-0507	What responsibilities do clients have related to individual provider work week limits?
WAC 388-71-0515	What are the responsibilities of an individual provider when providing services to a client?
WAC 388-71-0518	What responsibilities do individual providers have related to work week limitation?
WAC 388-71-0540	When will the department reject your choice of individual provider?
WAC 388-71-05410	What are the client's rights if the department rejects their choice of individual provider?
WAC 388-71-0543	When may the department reject your choice of an individual provider?
WAC 388-71-0561	When does an individual provider have the right to an administrative hearing and how can a hearing be requested?
WAC 388-71-05640	Self-directed care—Who must direct self-directed care?
WAC 388-71-06020	What is the purpose of WAC 388-71-06020 through 388-71-06165?
WAC 388-71-06040	What definitions apply to WAC 388-71-06020 through 388-71-06165?
WAC 388-71-06060	What is the purpose of the referral registry?



- WAC 388-71-06080 Who is eligible to request a list of providers from the referral registry?
- WAC 388-71-06125 Who hires an IP or prospective IP?
- WAC 388-71-06145 What requirements must an applicant satisfy to be placed on the referral registry as a provider?
- WAC 388-71-06150 What requirements does an IP or prospective IP have to meet in order to continue to be listed on the referral registry?
- WAC 388-71-06155 When will an IP or prospective IP be removed from the referral registry?
- WAC 388-71-06165 Can the removal of an IP or prospective IP from the referral registry be contested?

## WSR 22-14-049

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed June 28, 2022, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-052.

Title of Rule and Other Identifying Information: WAC 192-170-010  
Availability for work—RCW 50.20.010 and 192-320-075 Charges to the  
separating employer—RCW 50.29.021 (1)(c).

Hearing Location(s): On August 11, 2022, at 9 a.m., Zoom, Meeting  
ID 883 2333 0168, Passcode 714493, call-in 253-215-8782. Join Zoom  
meeting [https://us02web.zoom.us/j/88323330168?](https://us02web.zoom.us/j/88323330168?pwd=IoEH2W1aWK31231ZfyLro9kVfGaGVB.1)  
[pwd=IoEH2W1aWK31231ZfyLro9kVfGaGVB.1](https://us02web.zoom.us/j/88323330168?pwd=IoEH2W1aWK31231ZfyLro9kVfGaGVB.1).

Date of Intended Adoption: August 15, 2022.

Submit Written Comments to: Josh Dye, P.O. Box 9046, Olympia, WA  
98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by July 28,  
2022.

Assistance for Persons with Disabilities: Contact Teresa Eck-  
stein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email  
[Teresa.eckstein@esd.wa.gov](mailto:Teresa.eckstein@esd.wa.gov), by July 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including  
Any Changes in Existing Rules: The proposed rules clarify that, during  
a public health emergency, benefits for claimants terminated from work  
due to entering quarantine because of an exposure to or contracting  
the disease that is the subject of the declaration of the public  
health emergency will be charged 100 percent to the claimant's last  
employer if: (a) The employer is a base-period employer; (b) the em-  
ployer is a contribution-paying employer; (c) the employer is a health  
care facility as defined in RCW 9A.50.010; and (d) the claimant was  
directly involved in the delivery of health services. Additionally,  
the rules clarify that during the weeks of a declared public health  
emergency, an unemployed health care worker described in RCW  
50.20.050(3) and 50.29.021 (1)(c)(iii) is considered available for  
work while isolated or under quarantine as directed by a medical pro-  
fessional, local health official, or the secretary of health, if the  
individual is available for work that will commence after the isola-  
tion or quarantine period ends; or which can be performed for an em-  
ployer from the individual's home.

Reasons Supporting Proposal: ESSB 5190 amended availability re-  
quirements and created a good cause basis to quit work for certain  
health care workers during a public health emergency. RCW 50.20.010,  
50.20.050. ESSB 5190 also clarified that when an eligible individual's  
separation employer is a covered contribution paying base year employ-  
er, benefits paid to the eligible individual shall be charged to the  
experience rating account of only the individual's separation employer  
if the individual qualifies for benefits because during a public  
health emergency, the claimant worked at a health care facility as de-  
fined in RCW 9A.50.010, was directly involved in the delivery of  
health services, and was terminated from work due to entering quaran-  
tine because of exposure to or contracting the disease that is the  
subject of the declaration of the public health emergency. RCW  
50.29.021 (1)(c)(iii). The proposed rules provide clear and usable  
guidance for the public regarding unemployment benefits for health  
care workers during a public health emergency.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040  
provide general rule-making authority to the employment security de-

partment. RCW 50.20.010(5) and 50.20.050(3) address the availability requirements and good cause basis to quit work for certain health care workers during a public health emergency. RCW 50.29.021 (1)(c)(iii) states that when an eligible individual's separation employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separation employer if the individual qualifies for benefits because during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

Statute Being Implemented: RCW 50.20.010, 50.29.021.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, Washington, 360-890-3472; Implementation and Enforcement: Sam Virgil, Olympia, Washington, 360-890-3637.

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 Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email Rules@esd.wa.gov, <https://esd.wa.gov/newsroom/rulemaking/benefits>.

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. Due to the complexity of contribution calculations, the department is unable to forecast the costs to individual businesses. The proposed rule will create additional benefit charges as employers charged under WAC 192-320-075(3) will be charged for 100 percent of certain claimant's benefits (though an unknown number of those benefit charges would have been charged 100 percent regardless of the proposed rule). However, the number of possible variables for claims precludes the department from making a reliable forecast for individual businesses. When the possible increase is viewed across all employers, the department anticipates a negligible increase in tax liability for employers.

June 28, 2022

Dan Zeitlin

Employment Security Policy Director

## OTS-3715.2

AMENDATORY SECTION (Amending WSR 21-16-034, filed 7/26/21, effective 1/2/22)

**WAC 192-170-010 Availability for work—RCW 50.20.010.** (1) In general, the department will consider you available for work if you:

(a) Are willing to accept suitable full-time, part-time, and temporary work during the usual hours and days of the week customary for your occupation.

(i) You are not required to accept part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be willing to accept full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work for at least (~~forty~~) 40 hours during the week during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are considered available for work if you are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

(4) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States;

or

(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

(5) (a) During the weeks of a declared public health emergency, an unemployed health care worker described in RCW 50.20.050(3) and 50.29.021 (1)(c)(iii) is considered available for work while isolated or under quarantine as directed by a medical professional, local health official, or the Secretary of Health, if the individual is available for work that:

(i) Will commence after the isolation or quarantine period ends;

or

(ii) Can be performed from the individual's home.

(b) For the purposes of this section, a health care worker is defined as an individual who was directly involved in the delivery of health services at a health care facility as defined in RCW 9A.50.010.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010 and 50.20.100. WSR 21-16-034, § 192-170-010, filed 7/26/21, effective 1/2/22. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-170-010, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042 and 50.20.010. WSR 20-11-022, § 192-170-010, filed 5/13/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and

50.12.040. WSR 20-10-056, § 192-170-010, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-010, filed 5/12/10, effective 6/12/10.]

### OTS-3716.1

AMENDATORY SECTION (Amending WSR 21-12-068, filed 5/28/21, effective 6/28/21)

#### **WAC 192-320-075 Charges to the separating employer—RCW**

**50.29.021 (1) (c).** (1) If a claimant voluntarily quits work to accept a job with a new employer, (~~one hundred~~) 100 percent of benefits paid on the claim will be charged to the new employer when this new employer is the claimant's last employer, a base period employer, and a contribution-paying employer.

(2) If a claimant quits work because of the working conditions listed in this subsection, the employer from whom the separation occurred will be charged for (~~one hundred~~) 100 percent of benefits paid on the claim if the employer is the claimant's last employer, a base period employer, and a contribution-paying employer. These working conditions include:

(a) A reduction in the individual's usual compensation of (~~twenty-five~~) 25 percent or more under WAC 192-150-115;

(b) A reduction in the individual's usual hours of (~~twenty-five~~) 25 percent or more under WAC 192-150-120;

(c) A change in the work location which caused a substantial increase in distance or difficulty of travel under WAC 192-150-125;

(d) A deterioration in the individual's worksite safety under WAC 192-150-130;

(e) Illegal activities in the individual's worksite under WAC 192-150-135; or

(f) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs under WAC 192-150-140.

(3) During a public health emergency, 100 percent of the benefits paid on a claim will be charged to a claimant's last employer if:

(a) The employer is a base-period employer;

(b) The employer is a contribution-paying employer;

(c) The employer is a health care facility as defined in RCW

9A.50.010;

(d) The claimant was directly involved in the delivery of health services; and

(e) The claimant was terminated from work due to entering quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(4) Benefits based on wages paid by the following entities will **not** be charged to the experience-rating account of the separating employer as described in subsections (1) and (2) if they were earned:

(a) In another state;

(b) From a local government employer;

(c) From the federal government; or

(d) From any branch of the United States military.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-320-075, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 04-23-058, § 192-320-075, filed 11/15/04, effective 12/16/04.]

## WSR 22-14-059

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 29, 2022, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-090.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-1400 What services may I receive under New Freedom consumer directed services (NFCDS)?, 388-106-1405 What services are not covered under New Freedom consumer directed services (NFCDS)?, 388-106-1422 What happens to my New Freedom service dollar budget if I am temporarily hospitalized, placed in a nursing facility, or intermediate facilities for the mentally retarded?, 388-106-1455 What happens to individual budget funds when I don't use them?, 388-106-1458 How do I create and use my spending plan?, and 388-106-1475 How do I end enrollment in New Freedom consumer directed services (NFCDS)?

Hearing Location(s): On August 9, 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 held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than August 10, 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 August 9, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [tenczsa@dshs.wa.gov](mailto:tenczsa@dshs.wa.gov) [[tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov)], by 5:00 p.m. on July 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The intent of this rule making is to amend New Freedom WAC that have not been updated since 2013. The department is proposing to update language that will enable participants to receive covered goods and services timelier, to clarify goods and services items that cannot be purchased under the New Freedom program, and other minor language updates.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Governmental.

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

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule pursuant to RCW 34.05.328 and is exempt as it relates to client eligibility for medical goods and services.

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

Is exempt under RCW 19.85.025(4) because the proposed amendments do not impact small businesses and impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

Explanation of exemptions: The amendments relate to client eligibility for medical goods and services.

June 29, 2022  
Katherine I. Vasquez  
Rules Coordinator

#### SHS-4926.4

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

**WAC 388-106-1400 What services may I receive under New Freedom consumer directed services (NFCDS)?** (1) In order for services, supports, ~~((and/))~~ or items to be purchased under New Freedom, they must:

- (a) Be for your sole benefit;
- (b) Be at a reasonable cost;
- (c) Meet your identified needs and outcomes in the CARE assessment and address your health, safety, and welfare; and
- (d) Be documented on your New Freedom spending plan defined in WAC 388-106-0010. The spending plan, which is established with the Care Consultant, documents how you will spend your service budget dollars.

(2) Your consultant may require a physician or other licensed professional, such as an occupational or physical therapist to recommend a specific purchase in writing. This recommendation is needed to ensure the service, support, ~~((and/))~~ or item will increase, maintain, or delay decline of functional abilities, and to ensure the purchase supports your health and welfare.

(3) Medicare or medicaid state plan benefits or other insurance must be used prior to using New Freedom funds if the goods or services are covered under these programs.

(4) You may use your individual budget to purchase services, supports, ~~((and/))~~ or items that fall into the following service categories:

(a) **Personal assistance services**, defined as supports involving the labor of another person to assist you to carry out activities you are unable to perform independently. Services may be provided in your home or in the community and may include:

(i) Direct personal care services defined as assistance with activities of daily living, as defined in WAC 388-106-0010. These must be provided by a qualified individual provider or AAA-contracted home-care agency as described in WAC 388-106-0040 (1) and (2);

(ii) Delegated nursing tasks, per WAC 246-841-405 and 388-71-05830. Providers of direct personal care services may be delegated by a registered nurse to provide nurse delegated tasks according to RCW 18.79.260 and WAC 246-840-910 through 246-840-970;



(iii) Other tasks or assistance with activities that support independent functioning, and are necessary due to your functional disability;

(iv) Personal assistance with transportation or assistance with instrumental activities of daily living (essential shopping, housework, and meal preparation).

(b) **Treatment and health maintenance**, defined as treatments or activities that are beyond the scope of the medicaid state plan that are necessary to promote your health and ability to live independently in the community and:

(i) Are provided for the purpose of preventing further deterioration of your level of functioning, or improving or maintaining your current level of functioning; and

(ii) Are performed or provided by people with specialized skill, registration, certification, or licenses as required by state law.

(c) **Individual directed goods, services and supports**, defined as services, equipment or supplies not otherwise provided through this waiver or through the medicaid state plan; and

(i) Will allow you to function more independently; or

(ii) Increase your safety and welfare; or

(iii) Allow you to perceive, control, or communicate with your environment; or

(iv) Assist you to transition from an institutional setting to your home. Transition services may include safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings and basic items essential for basic living outside the institution. Transition services do not include rent, recreational or diverting items such as TV, cable or VCR/DVDs.

(d) **Environmental or vehicle modifications**, defined as alterations to your residence or vehicle that are necessary to accommodate your disability and promote your functional independence, health, safety, and ~~(/or)~~ welfare.

(i) Environmental modifications cannot be adaptations or improvements that are of general utility or merely add to the total square footage of the home.

(ii) Vehicles subject to modification must be owned by you or a member of your family who resides with you; must be in good working condition, licensed, and insured according to Washington state law; and be cost effective when compared to available alternative transportation.

(e) **Training and educational supports**, defined as supports beyond the scope of medicaid state plan services that are necessary to promote your health and ability to live and participate in the community and maintains, slows decline, or improves functioning and adaptive skills. Examples include:

(i) Training or education on your health issues, or personal skill development;

(ii) Training or education to paid or unpaid caregivers related to your needs.

(5) You may receive comprehensive adult dental services as defined in WAC 388-106-0300(15) through December 31, 2013. The cost of the dental services will not be deducted from your individual budget.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-1400, filed 8/29/13 and 8/21/13, effective

10/1/13; WSR 10-08-074, § 388-106-1400, filed 4/6/10, effective 5/7/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-1400, filed 7/25/06, effective 8/25/06.]

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

**WAC 388-106-1405 What services are not covered under New Freedom consumer directed services (NFCDS)?** (1) Goods, services, and supports that are not consistent with the description in WAC 388-106-1400.

~~((Services, supports and/or items that cannot be purchased within New Freedom budgets, including, but not limited to:))~~

~~((1))~~ (2) Services, supports ~~((and/))~~ or items covered by the state plan, medicare, or other programs or services.

~~((2))~~ (3) Any fees related to health or long-term care incurred by you, including co-pays, waiver cost of care (participation), or insurance.

~~((3))~~ (4) Home modifications that merely add square footage to your home.

~~((4))~~ (5) Vacation or travel expenses other than the direct cost of provision of personal care services while on vacation ~~((but))~~ and you may not use New Freedom funds to pay travel expenses for your provider).

~~((5))~~ (6) Rent or room and board.

~~((6))~~ (7) Tobacco or alcohol products ~~((+))~~.

~~((7))~~ (8) Lottery tickets.

~~((8))~~ (9) Entertainment-related items such as televisions, cable, DVD players, stereos, radios, ~~((computers))~~ and other electronics, that are nonadaptive in nature.

~~((9))~~ (10) Vehicle purchases, maintenance, or upgrades that do not include maintenance to modifications related to disability.

~~((10))~~ (11) Tickets and related costs to attend sporting or other recreational events.

~~((11) Standard household supplies, furnishings, equipment, and maintenance, such as cleaning supplies, beds/mattresses, chairs, vacuum cleaners, outside window cleaning, and major household appliances, such as washing machines or refrigerators (unless purchased while transitioning from an institution to home).))~~

(12) Pets, therapy animals and their related costs (including food and veterinary services).

(13) Postage outside of shipping costs related to approved spending plan items.

(14) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-500-0070.

~~((15) Gym equipment or exercise equipment over one hundred dollars per year.))~~

~~((16))~~ (15) Monthly service fees for utilities.

~~((17))~~ (16) Warranties (for equipment, furnishings, or installations).

~~((18))~~ (17) Cosmetic services and treatments (i.e. manicures, pedicures, ~~((hair services,))~~ face lifts, etc).

~~((19))~~ (18) Basic groceries, clothing, and footwear.

~~((20) Travel-related expenses.))~~

~~((21))~~ (19) Any item previously purchased through medicaid funding that is within the health care authority replacement period.

(20) Any goods, services, or supports that are considered of general utility, meaning the service/good/support is not specific to the individuals' needs based on their disabilities or health conditions.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-1405, filed 8/29/13 and 8/21/13, effective 10/1/13; WSR 10-08-074, § 388-106-1405, filed 4/6/10, effective 5/7/10.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

**WAC 388-106-1422 What happens to my New Freedom service dollar budget if I am temporarily hospitalized, placed in a nursing facility, or intermediate care facilities for ~~((the mentally retarded))~~ Intellectual Disability ~~((ICF/MR))~~ (ICF/ID)?** If you are admitted to a hospital, nursing home, or ~~((ICF/MR))~~ ICF/ID, you cannot access or accumulate funds to your New Freedom service budget during your stay.

If you are institutionalized for ~~((forty-five))~~ 30 days or less and you intend to return to New Freedom when discharged, your service budget will be temporarily suspended while you are temporarily hospitalized for up to 30 days. Upon discharge home, if within 30 days, your service budget will be reinstated if you are still eligible for New Freedom services.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-1422, filed 8/29/13 and 8/21/13, effective 10/1/13; WSR 10-08-074, § 388-106-1422, filed 4/6/10, effective 5/7/10.]

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

**WAC 388-106-1455 What happens to individual budget funds when I don't use them?** (1) The balance of individual budget funds that were not allocated for purchase of personal care may be used to purchase other goods and services in accordance with the approved New Freedom spending plan or saved for future purchase as described in (2) below.

(2) Up to ~~((three thousand five hundred dollars))~~ \$3,500 may be held in savings for future purchases documented in the New Freedom spending plan.

(3) Reserves in excess of ~~((three thousand five hundred dollars))~~ \$3,500 may only be maintained for exceptional, planned purchases with preapproval from the department.

(4) Unused funds will revert back to the department under the following circumstances:

- (a) You have savings funds in excess of (~~three thousand five hundred dollars~~) \$3,500 that are not identified for exceptional, pre-approved purchases in your spending plan;
- (b) You disenroll from New Freedom;
- (c) You lose eligibility for New Freedom;
- (d) You are hospitalized, l (~~and/or placed~~) in a nursing home, l or (~~ICM/FR~~) ICF/ID for over (~~forty-five~~) 30 days; or
- (e) You have personal care funds not used in the month for which you allocated them.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-1455, filed 8/29/13 and 8/21/13, effective 10/1/13; WSR 10-08-074, § 388-106-1455, filed 4/6/10, effective 5/7/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-1455, filed 7/25/06, effective 8/25/06.]

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

**WAC 388-106-1458 How do I create and use my spending plan? (1)**

You create your spending plan in collaboration with (~~the assistance of the~~) your care consultant using the (~~new freedom self-assessment and the~~) CARE (~~assessment~~) tool.

- (2) The spending plan must be approved by both you and the care consultant.
- (3) You, as the participant, (~~and your care consultant~~) must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month).
- (4) The value of those units is deducted from your new freedom budget.
- (5) The rest of the funds can be used for other covered goods and services or saved.
- (6) Once a service month begins, the number of personal care units may not be altered during that month.
- (7) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.
- (8) Prior to the service month, you may elect to use savings funds to buy additional personal care.
- (9) You may choose to have your personal care provided by an individual provider (IP) or a home care agency.
- (10) Each unit will be deducted from your new freedom budget at the average IP wage rate including mileage.
- (11) The balance of your individual new freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).
- (12) If you have a change of condition or situation and your new freedom budget increases due to a new assessment or exception to rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.
- (13) You may assign your predetermined personal care units to a different provider during the month of service.

(14) Under chapter 388-114 WAC, individual providers for one or more department clients who work more than ~~((forty))~~ 40 hours in a work week, are entitled to overtime and the responsibility for paying the extra cost as follows:

(a) If the individual provider is contracted with the department and approved to work more than ~~((forty))~~ 40 hours per week as described in WAC 388-114-0080, the department will pay the extra cost for overtime up to the number of service hours the individual provider is approved to work and the payment for these extra costs will not be charged to your budget; and

(b) If you assign more overtime hours to your individual provider than the department approved, you must pay the extra costs for the unapproved overtime hours and the additional cost will impact your monthly budget and may reduce the number of service hours you are able to purchase from it.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-106-1458, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.270, and 2016 1st sp.s. c 30. WSR 17-08-065, § 388-106-1458, filed 3/31/17, effective 5/1/17. Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-1458, filed 8/29/13 and 8/21/13, effective 10/1/13.]

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

**WAC 388-106-1475 How do I end enrollment in New Freedom consumer directed services (NFCDS)?** (1) You may choose to voluntarily end your enrollment from NFCDS without cause at any time. To do so, you must give notice to the department. If you give notice:

(a) Before the ~~((fifteenth))~~ 15th of the month, the department will end your enrollment at the end of the month; or

(b) After the ~~((fifteenth))~~ 15th, the department will end your enrollment the end of the following month.

(2) Your enrollment may also end involuntarily if you:

(a) Move out of the designated service area or are out of the service area for more than ~~((thirty))~~ 30 consecutive days, unless you have documented the purpose of the longer absence in the NFSP; or

(b) Do not meet the terms for consumer direction of services outlined in the ~~((NFCDS enrollment a))~~ New Freedom Participant Responsibility Agreement when:

(i) Even with ~~((help from a representative))~~ coaching and collaboration, you are unable to develop a NFSP or self-direct services or manage your individual budget or NFSP;

(ii) Any one factor or several factors of such a magnitude jeopardize the health, welfare, and safety of you and others, requiring termination of services under WAC 388-106-0047;

(iii) You become financially ineligible for medicaid services;

(iv) You no longer meet the nursing facility level of care requirement as defined in WAC 388-106-0355; ~~((or))~~

(v) You misuse program funds and services as determined by the department ~~((-))~~ ; or

(vi) You are unable to follow the responsibilities of a participant on the New Freedom program as determined by the department.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-1475, filed 8/29/13 and 8/21/13, effective 10/1/13. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-1475, filed 7/25/06, effective 8/25/06.]

**WSR 22-14-097**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed July 5, 2022, 8:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-070.

Title of Rule and Other Identifying Information: Amendments to chapter 296-880 WAC, Unified safety standards for fall protection.

Hearing Location(s): On August 9, 2022, at 1:00 p.m., at Department of Labor and Industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168; on August 11, 2022, at 10:00 a.m., at Hilton Garden Inn, Spokane Airport, 9015 US-2, Spokane, WA 99224; and on August 15, 2022, at 1:00 p.m., virtual via Zoom webinar, <https://lni-wa-gov.zoom.us/j/84647648222?pwd=eXdDZm11WEZkU1BoRkF4SnBRcWlrQT09>, phone 253-215-8782, Meeting ID 846 4764 8222, Passcode 416963061.

Date of Intended Adoption: September 20, 2022.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, email [Carmyn.Shute@lni.wa.gov](mailto:Carmyn.Shute@lni.wa.gov), fax 360-902-5619, by August 25, 2022.

Assistance for Persons with Disabilities: Contact Carmyn Shute, phone 360-902-6081, fax 360-902-5619, email [Carmyn.Shute@lni.wa.gov](mailto:Carmyn.Shute@lni.wa.gov), by August 2, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In August 2021, the division of occupational safety and health (DOSH) received notification from the Federal Occupational Safety and Health Administration (OSHA) relating to DOSH's fall protection standard. The notification advised L&I that DOSH needed to amend our fall protection rule in chapter 296-880 WAC in order to be at-least-as-effective as those administered by OSHA, as required by the Washington state plan. This rule making proposes changes to sections of the current fall protection rule that address roofing activities including leading edge work, work performed on a low or flat pitch roof, and ski area facility and operations.

**Chapter 296-880 WAC, Unified Safety Standards for Fall Protection:**

- WAC 296-880-090 Quick reference guide.
  - Roofing work on a low pitch roof. Threshold height change from 10 feet to six feet.
  - Constructing a leading edge. Threshold height change from 10 feet to six feet.
  - Ski area facilities and operations: Working at unprotected elevated locations. Threshold height change from more than 10 feet to four feet or more.
- WAC 296-880-095 Definitions.
  - Added definition for "Infrequent."
  - Removed definition for "Predictable and regular basis."
  - Clarified definition for "Safety watch system."
  - Added definition for "Temporary."
- WAC 296-880-20005 Fall protection required at four feet or more.
  - Added clarifying statement noting when fall protection is required at four feet or more.
  - Subsection (7)(e) added option for use of a guardrail.

- Subsection (7)(f) added option for use of a safety watch system if appropriate.
- Added exception for when work other than construction work is being performed under certain circumstances.
- Subsection (8) Safety watch system was removed.
- Subsection (9) was renumbered to subsection (8).
- Subsection (10) was renumbered to subsection (9).
- WAC 296-880-30005 Construction work.
  - Subsection (1) height threshold was changed from 10 feet to six feet.
  - Subsection (1)(c) renumbered to subsection (2) and further clarification provided regarding when fall protection is needed at hazards of 10 feet or more to the ground.
  - Subsection (1)(d) renumbered to subsection (2)(b).
  - Subsection (2) renumbered to subsection (3).
- WAC 296-880-30055 Ski area facilities and operations.
  - Subsection (1)(a) fall hazard height threshold reduced from 10 feet to four feet or more.
- WAC 296-880-40005 Guardrail systems.
  - Subsection (2)(d) reference to subsection [(2)](g) replaced with reference to subsection [(2)](h)(ii).
- WAC 296-880-40050 Safety watch system requirements.
  - Subsection (1) clarified language regarding when a safety watch system can be used.
  - Subsection (2)(a) removed "repair work or servicing equipment" and replaced with "work activity."
  - Subsection (2)(b) removed "repair" and "or service" to be consistent in the section.

Reasons Supporting Proposal: The proposed rule is needed to align standards on when fall protection must be in place with OSHA's standards as required under the Washington state plan. Several housekeeping changes are being proposed to ensure there is clarity on when fall protection is needed and differentiate what provisions of the chapter apply to construction work activities.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, federal OSHA regulation 29 C.F.R. 1910 and 1926.

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. A cost-benefit analysis is not required because the proposed changes adopt federal OSHA regulations as required to be as-effective-as OSHA and are exempt under RCW 34.05.328 (5)(b)(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 19.85.061 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: Portions of this rule are being amended in order to conform to the requirement to remain at-least-as-effective-as OSHA under the Washington state plan. Parts of this rule related to the use of fall protection that addresses roofing activities including leading edge work, work performed on a flat or low pitch roof, and ski area facility and operations are being addressed pursuant to the request of OSHA in their letter to the agency in August of 2021.

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; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

July 5, 2022  
Joel Sacks  
Director

### OTS-3734.3

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

#### WAC 296-880-090 Quick reference guide.

##### Unified Fall Protection Quick Reference Guide

General fall protection for all industries	Threshold height	WAC
Above or adjacent to dangerous equipment	Regardless of height	296-880-10010(1)
Holes into which an employee can trip, step into, or step through	Regardless of height	296-880-10010(2)
Falling into or onto impalement hazards	Regardless of height	296-880-10010(3)
When on a walking/working surface	Four feet or more	296-880-20005
Ramps, runways, and inclined walkways	Four feet or more	296-880-20005(2)
Holes where work is being performed	Four feet or more	296-880-20005(3)
Skylights	Four feet or more	296-880-20005 (3)(b)
Hatchway and chute holes	Four feet or more	296-880-20005 (3)(c)
Ladderways	Four feet or more	296-880-20005 (3)(d)
Pits and trap door holes	Four feet or more	296-880-20005 (3)(e)
Repair pits and service pits	Four feet or more	296-880-20005 (3)(f)
Manholes	Four feet or more	296-880-20005 (3)(g)
Openings	Four feet or more	296-880-20005(4)
Formwork and reinforcing work	Four feet or more	296-880-20005(5)

<b>General fall protection for all industries</b>	<b>Threshold height</b>	<b>WAC</b>
Steep pitch roof - Regardless of task	Four feet or more	296-880-20005(6)
Low pitch roof - Other than roofing work or constructing a leading edge	Four feet or more	296-880-20005(7)
Hazardous slopes	Four feet or more	296-880-20005(9)
Vehicles and rolling stock - If suitable anchorages cannot be provided or creates a greater hazard	Four feet or more	296-880-20005(10)
<b>Specific requirements not addressed in WAC 296-880-200 (above)</b>		
<b>Construction work</b> <i>*See also chapter 296-155 WAC</i>		
Roofing work on a low pitch roof	<del>((Ten))</del> Six feet	296-880-30005(1)
Constructing a leading edge	<del>((Ten))</del> Six feet	296-880-30005(1)
Engaged in the erection or placement of structural members	Ten feet	296-880-30005(1)
Engaged in excavation and trenching operations	Ten feet	296-880-30005(1)
<b>Order pickers (PITS)</b> <i>*See also chapter 296-863 WAC</i>		
Operators of order pickers	Regardless of height	296-880-30010 (1) and (2)
<b>Elevating work platforms</b> <i>*See also chapter 296-869 WAC</i>		
Vehicle mounted aerial devices	Regardless of height	296-880-30015(1)
Manually propelled and self-propelled elevating work platforms	Regardless of height if required by manufacturer	296-880-30015(2)
Boom supported elevating work platforms	Regardless of height	296-880-30015(3)
<b>Powered platforms</b> <i>*See also chapter 296-870 WAC</i>		
Working on a roof or other elevated working area	Four feet or more	296-880-30020(5)
<b>Window cleaning</b> <i>*See also chapter 296-878 WAC</i>		
Working on a roof or other elevated working area	Four feet or more	296-880-30025(1)
<b>Scaffolds</b> <i>*See also chapter 296-874 WAC</i>		
Working on a scaffold	Ten feet or more	296-880-30030(1)
<b>Cranes - Under the scope of chapter 296-155 WAC, Part L</b>		
For nonassembly/disassembly work	Six feet or more	296-880-30035(2)
For assembly/disassembly work	Ten feet or more	296-880-30035(3)
Towercranes - Work other than erecting, climbing, and dismantling	Six feet or more	296-880-30035 (4)(a)
Towercranes - Erecting, climbing, and dismantling work	Ten feet or more	296-880-30035 (4)(b)
<b>Telecommunications work</b> <i>*See also chapter 296-32 WAC</i>	Four feet or more	296-880-200 and 296-880-30040
<b>Qualified electrical workers</b> <i>*See also chapter 296-45 WAC</i>	Four feet or more	296-880-200
<b>Ship repairing, shipbuilding and shipbreaking</b> <i>*See also chapter 296-304 WAC</i>		
Working aloft or elsewhere at elevation	Five feet or more	296-880-30045
<b>Longshore, stevedore and waterfront related operations</b> <i>*See also chapter 296-56 WAC</i>		
Maintenance work on cranes, spouts, or similar types of equipment	Eight feet or more	296-880-30050(1)
Floor or wall openings or waterside edges, including bridges or gangway-like structures	Four feet or more	296-880-30050 (2)(a)
<b>Ski area facilities and operations</b> <i>*See also chapter 296-59 WAC</i>		
Working at unprotected elevated locations	<del>((More than ten feet))</del> Four feet or more	296-880-30055 (1)(a)

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-090, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

**WAC 296-880-095 Definitions.** For the purposes of this chapter the following definitions apply:

**Aerial device.** A vehicle-mounted device, telescoping or articulating, or both, which is used to position personnel.

**Affected area.** The distance away from the edge of an excavation equal to the depth of the excavation up to a maximum distance of (~~fifteen~~) 15 feet. For example, an excavation (~~ten~~) 10 feet deep has an affected area extending (~~ten~~) 10 feet from the edge of any side of the excavation.

**Anchorage.** A secure point of attachment for lifelines, lanyards, or deceleration devices which is capable of withstanding the forces specified in this chapter.

**Boom-supported elevating work platform.** A self-propelled, integral chassis, elevating work platform with a boom-supported platform that can be positioned completely beyond the base.

**Catch platform.** A type of fall arrest system that consists of a platform installed within four vertical feet of the fall hazard, is at least (~~forty-five~~) 45 inches wide and is equipped with a standard guardrail system on all exposed sides.

**Catenary line.** See "horizontal lifeline."

**Competent person.** An individual knowledgeable of fall protection equipment, including the manufacturer's recommendations and instructions for the proper use, inspection, and maintenance; and who is capable of identifying existing and potential fall hazards; and who has the authority to take prompt corrective action to eliminate those hazards; and who is knowledgeable of the requirements contained in this chapter regarding the installation, use, inspection, and maintenance of fall protection equipment and systems.

**Connector.** A device which is used to connect parts of the personal fall arrest system and positioning device systems together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or D-ring sewn into a harness, or a snap hook spliced or sewn to a lanyard or self-retracting lanyard).

**Construction work.** All or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling of buildings and other structures and all operations in connection therewith; the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads and all operations pertaining thereto; the moving of buildings and other structures, and to the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related thereto.

**Deceleration device.** Any mechanism, such as a rope grab, rip-stitch lanyard, specifically woven lanyard, tearing or deforming lanyards, automatic self-retracting lifelines/lanyards, etc., which serves to dissipate a substantial amount of energy during a fall ar-

rest, or otherwise limit the energy imposed on an employee during fall arrest.

**Deceleration distance.** The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's full body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

**Dropline.** A vertical lifeline secured to an upper anchorage for the purpose of attaching a lanyard or device.

**Elevating work platform.** A device used to position personnel, along with their necessary tools and materials, at work locations. It includes a platform and an elevating assembly. It may be vehicle-mounted or have an integral chassis for mobility and as a means of support.

**Equivalent.** Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate and will provide an equal or greater degree of safety for employees than the methods, materials, or designs specified in this standard.

**Fall arrest system.** A fall protection system that will arrest a fall from elevation. Fall arrest systems include personal fall arrest systems that are worn by the user, catch platforms, and safety nets.

**Fall distance.** The actual distance from the worker's support to the level where a fall would stop.

**Fall protection work plan.** A written planning document in which the employer identifies all areas on the job site where a fall hazard of ~~(ten)~~ 10 feet or more exists. The plan describes the method or methods of fall protection to be used to protect employees, and includes the procedures governing the installation, use, inspection, and removal of the fall protection method or methods which are selected by the employer. See WAC 296-880-10020.

**Fall restraint system.** A system in which all necessary components function together to restrain/prevent an employee from falling to a lower level. Types of fall restraint systems include standard guardrail systems, personal fall restraint systems, warning line systems, or a warning line system and safety monitor.

**Feasible.** It is possible to perform the work using a conventional fall protection system (i.e., guardrail system, safety net system, or personal fall arrest system) or that it is technologically possible to use any one of these systems to provide fall protection.

**Free fall.** The act of falling before a personal fall arrest system begins to apply force to arrest the fall.

**Free fall distance.** The vertical displacement of the fall arrest attachment point on the employee's full body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

**Full body harness.** A configuration of connected straps that meets the requirements specified in ANSI Z359.1, that may be adjustable to distribute a fall arresting force over at least the thighs, shoulders and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration devices.

**Full body harness system.** A full body harness and lanyard which is either attached to an anchorage meeting the requirements of this chapter; or it is attached to a horizontal or vertical lifeline which is properly secured to an anchorage(s) capable of withstanding the forces specified in this chapter.

**Handrail.** A rail used to provide employees with a handhold for support.

**Hardware.** Snap hooks, D-rings, bucklers, carabiners, adjusters, or O-rings, that are used to attach the components of a fall protection system together.

**Hazardous slope.** A slope from which construction work is performed where normal footing cannot be maintained without the use of devices due to the pitch of the surface, weather conditions, or surface material.

**Hole.** A gap or void two inches or more in its least dimension, in a floor, roof, or other surface.

**Horizontal lifeline.** A rail, rope, wire, or synthetic cable that is installed in a horizontal plane between two anchorages and used for attachment of a worker's lanyard or lifeline device while moving horizontally; used to control dangerous pendulum like swing falls.

**Infrequent.** The task or job is performed only on occasion, when needed (e.g., equipment breakdown), on an occasional basis, or at sporadic or irregular intervals.

**Lanyard.** A flexible line of webbing, rope, or cable used to secure a positioning harness or full body harness to a lifeline or an anchorage point usually two, four, or six feet long.

**Leading edge.** The advancing edge of a floor, roof, or formwork which changes location as additional floor, roof, or formwork sections are placed, formed, or constructed. A leading edge is considered to be an "unprotected side or edge" during periods when it is not actively and continuously under construction.

**Lifeline.** A vertical line from a fixed anchorage or between two horizontal anchorages, independent of walking or working surfaces, to which a lanyard or device is secured. Lifeline as referred to in this text is one which is part of a fall protection system used as back-up safety for an elevated worker or as a restraint for workers on a flat or sloped surface.

**Locking snap hook.** A connecting snap hook that requires two separate forces to open the gate; one to deactivate the gatekeeper and a second to depress and open the gate which automatically closes when released; used to minimize roll out or accidental disengagement.

**Low pitched roof.** A roof having a slope equal to or less than four in (~~twelve~~) 12.

**Maintenance.** The work of keeping a building, machine, roadway, etc., in a state of good repair.

**Manually propelled elevating work platform.** A manually propelled, integral chassis, elevating work platform with a platform that cannot be positioned completely beyond the base.

**Mechanical equipment.** All motor or human propelled wheeled equipment except for wheelbarrows, mopcars, robotic thermoplastic welders, and robotic crimpers.

**Opening.** A gap or void (~~thirty~~) 30 inches (76 cm) or more high and (~~eighteen~~) 18 inches (48 cm) or more wide, in a wall or partition, through which employees can fall to a lower level.

**Personal fall arrest system.** A fall arrest system that is worn by the employee to arrest the employee in a fall from elevation. It consists of an anchor point, connectors, a full body harness, and may in-

clude a lanyard, deceleration device, lifeline, or suitable combinations of these.

**Personal fall restraint system.** A fall restraint system that is worn by the employee to keep the employee from reaching a fall point, such as the edge of a roof or elevated work surface. It consists of an anchor point, hardware assemblies, a full body harness and may include a lanyard, restraint lines, or suitable combinations of these.

**Platform.** A work surface elevated above the surrounding floor or ground.

**Positioning device system.** A full body harness or positioning harness that is worn by an employee, and is rigged to allow an employee to be supported on an elevated vertical or inclined surface, such as a wall, pole or column and work with both hands free from the body support.

**Positioning harness.** A body support that meets the requirements specified in ANSI Z359.1 that encircles and closes around the waist and legs with attachment elements appropriate for positioning work.

~~((Predictable and regular basis. Employee tasks which are performed either:~~

~~(a) At least once every two weeks; or~~

~~(b) Four employee hours or more during any sequential four-week period. (To calculate employee hours multiply the number of employees by the number of hours during a four-week period).))~~

**Qualified person.** One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project.

**Repair.** To restore a building, machine, roadway, etc., to an original state after damage or decay.

**Restraint line.** A line from a fixed anchorage or between two anchorages to which an employee is secured in such a way as to prevent the worker from falling to a lower level.

**Roof.** The exterior surface on the top of a building. This does not include floors or formwork which, because a building has not been completed, temporarily become the top surface of a building.

**Roofing work.** The hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

**Rope grab.** A fall arrester that is designed to move up or down a lifeline suspended from a fixed overhead or horizontal anchorage point, or lifeline, to which the full body harness is attached. In the event of a fall, the rope grab locks onto the lifeline rope through compression to arrest the fall. The use of a rope grab device is restricted for all restraint applications. See WAC 296-880-40025.

**Runway.** A passageway for persons, elevated above the surrounding floor or ground level, such as a footwalk along shafting or a walkway between buildings.

**Safety line.** See "lifeline."

**Safety monitoring system.** A type of fall restraint system in which a competent person whose only job responsibility is to recognize and warn employees of their proximity to fall hazards when working between the warning line and the unprotected sides and edges, including the leading edge of a low pitch roof or other walking/working surface.

**Safety net system.** A type of fall arrest system, as described in WAC 296-880-40055.

**Safety watch system.** A type of fall protection system ((as described in WAC ~~296-880-40050,~~) in which a competent person ((monitors one worker who is engaged in repair work or servicing equipment on low pitch roofs only)) is responsible for recognizing and warning one employee of a fall hazard.

**Scaffold.** A temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials.

**Self-propelled elevating work platform.** A self-propelled, integral chassis, elevating work platform with a platform that cannot be positioned completely beyond the base.

**Self-rescue device.** A piece of equipment designed to allow a person, who is suspended in a personal fall arrest system, to independently rescue themselves after the fall by moving the device up or down until they reach a surface and are no longer suspended.

**Self-retracting lifeline.** A deceleration device which contains a wound line which may be slowly extracted from, or retracted onto, the device under slight tension during normal employee movement, and which after onset of a fall, automatically locks the drum and arrests the fall.

**Service.** To repair or provide maintenance for.

**Shock absorbing lanyard.** A flexible line of webbing, cable, or rope used to secure a full body harness to a lifeline or anchorage point that has an integral shock absorber.

**Snap hook.** See "locking snap hook."

**Standard guardrail system.** A type of fall restraint system that is a vertical barrier consisting of a top rail and midrail, and toeboard when used as falling object protection for persons who may work or pass below, that is erected along all open sides or edges of a walking/working surface, ramps, platforms, or runways.

**Standard strength and construction.** Any construction of guardrails, handrails, covers, or other guards that meets the requirements of this chapter.

**Static line.** See "horizontal lifeline."

**Steep pitched roof.** A roof having a slope greater than four in ((twelve)) 12.

**Structural member.** A support that is a constituent part of any building or structure. Structural members include columns, girders, beams, trusses, joists, and similar supporting members of a building or structure.

**Suitable.** That which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

**Temporary.** The duration of the task the worker performs is brief or short.

**Toeboard.** A vertical barrier at floor level erected along all open sides or edges of a floor opening, platform, runway, ramp, or other walking/working surface to prevent materials, tools, or debris from falling onto persons passing through or working in the area below.

**Unprotected sides and edges.** Any open side or edge of a floor, roof, balcony/deck, platform, ramp, runway, or walking/working surface where there is no standard guardrail system, or parapet wall of solid strength and construction that is at least ((thirty-nine)) 39 inches in vertical height.

**Walking/working surface.** Any surface, whether horizontal or vertical on which an employee walks, works, or gains access to a work

area or workplace location. Walking/working surfaces include, but are not limited to, floors, the ground, roofs, ramps, bridges, runways, stairs, dockboards, formwork, and reinforcing steel but not including ladders.

**Warning line system.** A barrier erected on a walking and working surface or a low pitch roof (four in (~~twelve~~) 12 or less), to warn employees that they are approaching an unprotected fall hazard(s).

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-095, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

**WAC 296-880-20005 Fall protection required at four feet or more.**

The employer must ensure that fall arrest systems, fall restraint systems, or positioning device systems are provided, installed, and implemented in accordance with WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of four feet or more to the ground or lower level.

(1) Walking/working surfaces with unprotected sides or edges. Except as required in subsections (2) through (10) of this section, the employer must ensure that each employee on a walking/working surface with an unprotected side or edge four feet or more above the ground or lower level is protected by one of the following fall protection systems:

(a) A standard guardrail system, or the equivalent, as specified in WAC 296-880-40005, on all open sides, except where there is entrance to a ramp, stairway, or ladder. The guardrail must be provided with a standard toeboard wherever: Beneath the open sides, persons can pass, there is moving machinery, or there is equipment with which falling materials could create a hazard.

(i) When employees are using stilts, the height of the top rail or equivalent member of the guardrail system must be increased (or additional rails may be added) an amount equal to the height of the stilts while maintaining the strength specifications of the guardrail system.

(ii) Where employees are working on or from platforms or ladders above the protection of the guardrail system, the employer must either increase the height of the guardrail system (or additional rails may be added) or select and implement another fall protection system as specified in (b), (c), (d), (e), or (f) of this subsection.

(iii) When guardrails must be temporarily removed to perform a specific task, the area must be constantly attended by an employee until the guardrail is replaced. The only duty the employee must perform is to warn persons entering the area of the fall hazard. The employee must be protected from the fall hazard by a personal fall arrest system or personal fall restraint system.

(b) A personal fall restraint system;

(c) A personal fall arrest system;

(d) A safety net system;

(e) A catch platform; or

(f) A warning line system.

(2) Guarding of ramps, runways, and inclined walkways.



(a) Ramps, runways, and inclined walkways that are four feet or more above the ground or lower level must be equipped with a standard guardrail system or the equivalent, as specified in WAC 296-880-40005, along each open side. Wherever tools, machine parts, or materials are likely to be used on the runway, a toeboard must also be installed on each open side to protect persons working or passing below.

(b) Runways used exclusively for special purposes may have the guardrail on one side omitted where operating conditions necessitate such omission, provided the falling hazard is minimized by using a runway not less than (~~eighteen~~) 18 inches wide.

**Note:** See WAC 296-880-40010 for other specific criteria for ramps, runways, and inclined walkways.

(3) Holes.

(a) The employer must protect employees from falling into or through holes four feet or more to the ground or lower level by one of the following fall protection systems:

(i) A standard guardrail system, or the equivalent, as specified in WAC 296-880-40005, on all open sides, except where there is entrance to a ramp, stairway, or ladder. The guardrail must be provided with a standard toeboard wherever, beneath the open sides, persons can pass, or there is moving machinery, or there is equipment with which falling materials could create a hazard;

(ii) A cover, as specified in WAC 296-880-40015;

(iii) A warning line system erected at least (~~fifteen~~) 15 feet from all unprotected sides or edges of the hole and meets the requirements of WAC 296-880-40040;

(iv) When the cover, guardrail system, or warning line system must be temporarily removed to perform a specific task, an employee must remain at the hole until the cover, guardrail system, or warning line system is replaced. The only duty the employee must perform is to warn persons entering the area of the fall hazard. The employee must be protected from the fall hazard by a personal fall arrest system or personal fall restraint system; or

(v) Personal fall arrest systems or personal fall restraint systems.

(b) The employer must guard skylight holes and skylights.

(i) Unprotected skylight holes must be guarded by covers of standard strength and construction, standard guardrail systems on all exposed sides, or employees must be protected by personal fall restraint systems, or personal fall arrest systems.

(ii) If the skylight has been installed and is not capable of supporting, without failure, at least twice the weight of employees, equipment, and materials that may be imposed on the skylight at any one time, the skylight must be guarded by a cover of standard strength and construction, a standard guardrail system on all sides, or employees must be protected by personal fall restraint systems, or personal fall arrest systems.

(c) The employer must guard hatchways and chute holes by one of the following:

(i) Hinged covers of standard strength and construction and a standard guardrail system with only one exposed side. When the hole is not in use, the cover must be closed or the exposed side must be guarded at both top and intermediate positions by removable standard guardrail systems; or

(ii) A removable standard guardrail system with toeboard on not more than two sides of the hole and fixed standard guardrail system with toeboards on all other exposed sides. The removable guardrail

must be kept in a place when the hole is not in use and must be hinged or otherwise mounted so as to be conveniently replaceable.

(d) The employer must guard ladderways or platforms by a standard guardrail system with standard toeboards on all exposed sides, except at the entrance to a hole, with the passage through the guardrail either provided with a swinging gate or so offset that a person cannot walk directly into the hole.

(e) The employer must guard pits and trap door holes by covers of standard strength and construction. While the cover is not in place, the pit or trap door holes must be protected on all exposed sides by a standard guardrail system.

(f) The employer must guard repair pits, service pits, and assembly pits by a cover, a guardrail system, a fall restraint system or fall arrest system.

(g) The employer must guard manholes by standard covers which need not be hinged in place. While the cover is not in place, the hole must be constantly attended or must be protected by a removable standard guardrail system.

(4) Guarding of openings. The employer must ensure that each employee working on, at, above, or near openings (including those with chutes attached) where the outside bottom edge of the opening is four feet or more above a lower level and the inside bottom edge of the opening is less than (~~thirty-nine~~) 39 inches above the working surface, are protected from falling by the use of a guardrail system, a safety net system, a personal fall arrest system, or personal fall restraint system.

(5) Fall protection during form and reinforcing work. The employer must ensure that employees exposed to fall hazards of four feet or more while placing or tying reinforcing steel or working on the face of formwork or reinforcing steel are protected by personal fall arrest systems, positioning device systems, or safety net systems.

(6) Fall protection on steep pitched roofs. Regardless of the work activity, the employer must ensure that employees exposed to fall hazards of four feet or more while working on a roof with a pitch greater than four in (~~twelve~~) 12 use one of the following:

(a) Fall restraint system. Safety monitor systems and warning line systems are prohibited on steep pitched roofs;

(b) A personal fall arrest system; or

(c) A positioning device system.

(7) Fall protection on low pitched roofs. The employer must ensure that employees exposed to fall hazards of four feet or more while engaged in work, other than roofing work or constructing a leading edge on low pitched roofs use one of the following:

(a) A personal fall restraint system;

(b) A personal fall arrest system;

(c) A positioning device system; (~~or~~)

(d) A warning line system;

(e) A standard guardrail system;

(f) Safety watch system when work, other than construction work, is performed that is both infrequent and temporary, and not within six feet of the roof edge.

**Exception:** When work, other than construction work, is performed 15 feet or more from the roof edge, the employer is not required to provide any fall protection, provided the work is both infrequent and temporary and the employer implements and enforces a work rule prohibiting employees from going within 15 feet of the roof edge without using fall protection in accordance with (a) through (f) of this subsection.

~~(8) ((Safety watch system. When one employee is conducting repair work or servicing equipment on a low pitch roof four feet or more~~

above a lower level, employers are allowed to use a safety watch system in accordance with ~~WAC 296-880-40050~~.

~~(9))~~ Hazardous slopes. Employees exposed to falls of four feet or more while performing construction work on a hazardous slope must use personal fall restraint systems or positioning device systems.

~~((10))~~ (9) Vehicles and rolling stock. The employer must ensure that employees exposed to fall hazards of four feet or more to the ground or lower level from vehicles or rolling stock on which employees must be located in order to perform their job duties are protected by fall arrest systems, fall restraint systems, or positioning device systems.

**Exception:** Where suitable anchorages cannot be provided or when the use of fall protection creates a greater hazard, work may be performed on vehicles or rolling stock without a fall protection system.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-20005, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

**WAC 296-880-30005 Construction work.** This section applies to work activities under the scope of chapter 296-155 WAC, Safety standards for construction work, unless specifically addressed in WAC 296-880-200 of this chapter.

(1) The employer must ensure that a fall arrest system, fall restraint system, or positioning device system is provided, installed, and implemented in accordance with ~~((this chapter))~~ WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of ~~((ten))~~ six feet or more to the ground or lower level while:

- (a) Engaged in roofing work on a low pitched roof;
- (b) Constructing a leading edge ~~((+))~~.

**Exception:** Employees not directly involved with constructing the leading edge, or are not performing roofing work must comply with WAC 296-880-200 Fall protection required at four feet or more.

~~((e))~~ (2) The employer must ensure that a fall arrest system, fall restraint system, or positioning device system is provided, installed, and implemented in accordance with WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of 10 feet or more to the ground or lower level while:

- (a) Engaged in the erection or placement of structural members.

**Exception:** When the erection or placement of structural members is performed on or from a floor, deck, roof, or similar surface you must comply with WAC 296-880-200 Fall protection required at four feet or more.

~~((d))~~ (b) Engaged in excavation and trenching operations.

(i) Exceptions. Fall protection is not required at excavations when employees are:

- (A) Directly involved with the excavation process and on the ground at the top edge of the excavation; or
- (B) Working at an excavation site where appropriate sloping of side walls has been implemented as the excavation protective system.

(ii) Fall protection is required for employees standing in or working in the affected area of a trench or excavation exposed to a fall hazard of ~~((ten))~~ 10 feet or more; and:

(A) The employees are not directly involved with the excavation process; or

(B) The employees are on the protective system or any other structure in the excavation.

**Note:** Persons considered directly involved in the excavation process include:

1. Foreman of the crew.
2. Signal person.
3. Employee hooking on pipe or other materials.
4. Grade person.
5. State, county, or city inspectors inspecting the excavation or trench.
6. An engineer or other professional conducting a quality-assurance inspection.

((2)) (3) Employees are exempt from WAC 296-880-30005 under the following conditions:

(a) During initial installation of the fall protection anchor prior to engaging in any work activity, or the disassembly of the fall protection anchor after all work activities have been completed;

(b) When employees are inspecting, investigating, or assessing roof level conditions or work to be performed only on low pitch roofs prior to the start of construction work or after all construction work has been completed;

This exemption does not apply on steep pitch roofs, where construction work is underway, or when fall protection systems or equipment meeting the requirements of this chapter have been installed and are available for workers to use for pre-work and post-work inspections, investigations, or assessments.

**Note:** Examples of activities the department recognizes as inspecting or estimating include:

- Measuring a roof to determine the amount of materials needed for a project;
- Inspecting the roof for damage without removing equipment or components; and
- Assessing the roof to determine what method of fall protection will be provided to employees.

**Note:** Examples the department does not recognize as inspecting or estimating under this exemption include:

- Delivering, staging, or storing materials on a roof; and
- Persons estimating or inspecting on roofs that would be considered a "hazardous slope" by definition.

(c) When employees must be located on vehicles, or rolling stock in order to perform their job duties.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-30005, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

**WAC 296-880-30055 Ski area facilities and operations.** This section applies to all persons, firms, corporations, or others engaged in the operation of organized ski areas and facilities under the scope of chapter 296-59 WAC, Safety standards for ski area facilities and operations.

(1) Personal protective equipment, general requirements.

(a) Personal fall arrest systems or personal fall restraint systems must be provided and used whenever employees are working in locations which expose them to a fall hazard of four feet or more (~~than ten feet~~).

(b) Employees will not be required to wear personal fall protection systems while riding on a standard lift chair while seated in the normal riding position.

(2) Ski lift facilities and structures. Personal fall arrest systems or personal fall restraint systems must be used when working at unprotected elevated locations. Exception to this requirement must only be permitted for emergency rescue or emergency inspection if a personal fall arrest system is not immediately available. Required per-

sonal protective equipment must be made available as quickly as possible.

(3) Guardrails on ski lift aerial work platforms.

(a) The platform must be equipped with standard height and strength guardrails where such guardrails will pass through the configuration of all lifts on which it is intended to be used.

(b) Where guardrails must be less than (~~thirty-nine~~) 39 inches high in order to clear carriages, guidage, etc., guardrails must be as high as will clear the obstructions but never less than (~~twelve~~) 12 inches high.

(c) If the work platform is equipped with an upper work level, the upper level platform must be equipped with a toeboard at least four inches high.

(d) Each platform must be equipped with a lanyard attachment ring for each permissible occupant to attach a personal fall arrest system or personal fall restraint system.

(e) Each lanyard attachment ring must be of such strength as to sustain (~~five thousand four hundred~~) 5,400 pounds of static loading for each occupant permitted to be attached to a specific ring.

(f) Attachment rings must be permanently located as close to the center balance point of the platform as is practical.

(g) The rings may be movable, for instance, up and down a central suspension rod, but must not be completely removable.

(4) Work platform use.

(a) Passengers must be provided with and must use the correct personal fall arrest system or personal fall restraint system for the intended work.

(b) Any time a passenger's position is not protected by a standard guardrail at least (~~thirty-nine~~) 39 inches high, the individual must be protected by a personal fall restraint system, which will not permit free-fall over the platform edge.

(c) When personnel are passengers on a work platform and their work position requires the use of a personal fall arrest or personal fall restraint system, the lanyard must be attached to the work platform, not to the haulrope or tower.

All specifications would be in accordance with WAC 296-880-400.

Additional requirements for ski area facilities and operations can be found in chapter 296-59 WAC, Safety standard for ski area facilities and operations.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-30055, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

**WAC 296-880-40005 Guardrail systems.** Guardrail systems and their use must conform to the following provisions:

(1) A standard guardrail system must consist of top rail, intermediate rail, and posts, and must have a vertical height of (~~thirty-nine to forty-five~~) 39 to 45 inches from upper surface of top rail to floor, platform, runway, or ramp level. When conditions warrant, the height of the top edge may exceed the (~~forty-five~~) 45 inch height, provided the guardrail system meets all other criteria of this subsec-

tion. The intermediate rail must be halfway between the top rail and the floor, platform, runway, or ramp. The ends of the rails must not overhang the terminal posts except where such overhang does not constitute a projection hazard.

(2) Minimum requirements for standard guardrail systems under various types of construction are specified in the following items:

(a) For wood guardrails, the posts must be of at least two-inch by four-inch stock spaced not to exceed eight feet. The top rail must be of at least two-inch by four-inch stock and each length of lumber must be smooth surfaced throughout the length of the guardrail. The intermediate rail must be of at least one-inch by six-inch stock. Other configurations may be used for the top rail when the configuration meets the requirements of (g) of this subsection.

(b) For pipe guardrails, posts and top and intermediate rails must be at least one and one-half inches nominal OD diameter with posts spaced not more than eight feet on centers. Other configurations may be used for the top rail when the configuration meets the requirements of (g) of this subsection.

(c) For structural steel guardrails, posts and top and intermediate rails must be of two-inch by two-inch by three-eighths inch angles or other metal shapes of equivalent bending strength, with posts spaced not more than eight feet on centers. Other configurations may be used for the top rail when the configuration meets the requirements of (g) of this subsection.

(d) For wire rope guardrails, the top and intermediate rails must meet the strength factor and deflection of ~~((g))~~ (h)(ii) of this subsection. The top rail must be flagged at not more than six foot intervals with high visibility material. Posts must be spaced not more than eight feet on centers. The rope must be stretched taut and must be between ~~((thirty-nine and forty-five))~~ 39 and 45 inches in height at all points. Other configurations may be used for the top rail when the configuration meets the requirements of (h) of this subsection.

(e) Guardrail systems must be of such construction that the completed structure is capable of withstanding a load of at least ~~((two hundred))~~ 200 pounds applied within two inches of the top edge, in any outward or downward direction, at any point along the top edge.

(f) When the ~~((two hundred))~~ 200 pound test load specified in (e) of this subsection is applied in a downward direction, the top edge of the guardrail must not deflect to a height less than ~~((thirty-nine))~~ 39 inches above the walking/working surface.

(g) Guardrails receiving heavy stresses from employees trucking or handling materials must be provided additional strength by the use of heavier stock, closer spacing of posts, bracing, or by other means.

(h) Other types, sizes, and arrangements of guardrail construction are acceptable, provided they meet the following conditions:

(i) A smooth surfaced top rail at a height above floor, platform, runway, or ramp level between ~~((thirty-nine and forty-five))~~ 39 and 45 inches;

(ii) When the ~~((two hundred))~~ 200 pound (890 N) load specified in (e) of this subsection is applied in a downward direction, the top edge of the guardrail must not deflect to a height less than ~~((thirty-nine))~~ 39 inches (1.0 m) above the walking/working surface. Guardrail system components selected and constructed in accordance with this chapter will be deemed to meet this requirement;

(iii) Protection between top rail and floor, platform, runway, ramp, or stair treads, equivalent at least to that afforded by a standard intermediate rail;

(iv) Elimination of overhang of rail ends unless such overhang does not constitute a hazard.

(3) Toeboard specifications.

(a) A standard toeboard must be a minimum of three and one-half inches in vertical height from the top edge to the level of the walking/working surface. Toeboards may be made of any substantial material, either solid, or with openings not over one inch in greatest dimension. Toeboards must be securely fastened in place with no more than one-quarter inch clearance above the walking/working surface.

(b) Where material is piled to such height that a standard toeboard does not provide protection, paneling, or screening from floor to intermediate rail or to top rail must be provided.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-40005, filed 6/2/20, effective 10/1/20.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

**WAC 296-880-40050 Safety watch system requirements.** Safety watch systems and their use must conform to the following provisions:

(1) When one employee is conducting (~~any repair~~) work (~~or servicing equipment~~), other than construction work, on a low pitch roof, not within six feet of the roof edge (~~(, and where exposure to falls is infrequent (not on a predictable and regular basis))~~) and when the work is both infrequent and temporary, employers are allowed to use a safety watch system.

(2) The employer must ensure the safety watch system meets the following requirements:

(a) There can only be two people on the roof while the safety watch system is being used: One employee acting as the safety watch and one employee engaged in the (~~repair work or servicing equipment~~) work activity;

(b) The employee performing the (~~repair~~) work (~~or service~~) must comply promptly with fall hazard warnings from the safety watch;

(c) Mechanical equipment is not used; and

(d) The safety watch system is not used when weather conditions create additional hazards.

(3) The employer must ensure the employee acting as the safety watch meets all of the following:

(a) Is a competent person as defined in WAC 296-880-095;

(b) Is trained in the requirements of this section;

(c) Has full control over the work as it relates to fall protection;

(d) Has a clear, unobstructed view of the worker;

(e) Is able to maintain normal voice communication; and

(f) Performs no other duties while acting as the safety watch.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-880-40050, filed 6/2/20, effective 10/1/20.]

**WSR 22-14-101**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed July 5, 2022, 3:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-139.

Title of Rule and Other Identifying Information: Amending WAC 415-111-310 Defined contribution account distribution (withdrawal), 415-111-320 May I purchase a life annuity with my Plan 3 defined contribution account?, 415-501-485 How do I obtain a distribution?, 415-501-487 If my beneficiary dies while receiving my accumulated deferrals, who will get the remainder of the account?, 415-501-488 How will the account be distributed if my beneficiary is my spouse?, 415-501-491 How will the account be distributed if my beneficiary is not my spouse?, and 415-501-510 May I withdraw some or all of my accumulated deferrals in the event of an unforeseeable emergency?

Hearing Location(s): On August 9, 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/83693803902>, Meeting ID 836 9380 3902, Dial-In 253-215-8782.

Date of Intended Adoption: August 10, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems (DRS), email [drs.appeals@drs.wa.gov](mailto:drs.appeals@drs.wa.gov), by July 29, 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 July 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To ensure customers understand their distribution options from their defined contribution (Plan 3) or deferred compensation program (DCP) accounts, with the addition of new options permitted by the federal SECURE and CARES Acts, and the removal of direct purchases of commercial annuities.

Reasons Supporting Proposal: To ensure customers are aware of options allowed under the plans, as well as to codify changes to DCP since the WAC serve as the plan documents that would be used for IRS review.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 41.34 RCW; and RCW 41.50.770.

Rule is necessary because of federal law, the federal CARES and SECURE Acts made some of these changes as required, others were optional provisions in these acts that DRS has decided to implement.

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 34.05.325 (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 business.

July 5, 2022  
Rubi Reaume  
Rules Coordinator

## OTS-3906.2

AMENDATORY SECTION (Amending WSR 20-17-006, filed 8/5/20, effective 9/5/20)

**WAC 415-111-310 Defined contribution account distribution (withdrawal).** (1) **What are the requirements to request a distribution (withdrawal) of funds from my defined contribution account?**

- (a) You must separate from all eligible employment;
- (b) The department must receive the notice of separation from your employer(s); and
- (c) The department's ((designated)) recordkeeper must receive a completed request for a defined contribution distribution from your account. See WAC 415-111-110.

(2) **Can I receive a special exception distribution?**

- (a) If you are terminally ill and eligible, the department's ((designated)) recordkeeper will arrange for payment to you within ((ten)) 10 workdays. To be eligible for a special exception payment:
  - (i) You must separate from all eligible employment;
  - (ii) The department must receive the notice of separation from your employer(s);
  - (iii) The department's ((designated)) recordkeeper must receive documentation verifying your terminal illness; and
  - (iv) The department's ((designated)) recordkeeper must receive a completed request for a defined contribution distribution from your account (see WAC 415-111-110).
- (b) If you have an unforeseeable emergency, the department's ((designated)) recordkeeper will consider your request for a special exception payment and arrange for payment to you whenever possible. To be eligible for consideration:
  - (i) You must separate from all eligible employment;
  - (ii) The department must receive the notice of separation from your employer(s);
  - (iii) The department's ((designated)) recordkeeper must receive documentation verifying and explaining your unforeseeable emergency. The recordkeeper will consider only unforeseeable emergencies. An unforeseeable emergency is defined as a severe financial hardship resulting from:
    - (A) An accident or serious illness of you or an immediate family member;
    - (B) The need to pay for medical expenses for you or a dependent;
    - (C) Imminent foreclosure or eviction from your primary residence;
    - (D) The need to pay for funeral expenses of a spouse or immediate family member; or
    - (E) Loss of property due to casualty.

(iv) The department's ((designated)) recordkeeper must receive a completed request for a defined contribution distribution from your account (see WAC 415-111-110).

(c) Depending on which program you are invested in, self-directed or WSIB Total Allocation Portfolio (TAP), the recordkeeper will distribute your special exception payment as specified in the table below, less any applicable tax withholding.

	<b>Terminal Illness</b>	<b>Unforeseeable Emergency</b>
<b>Self-Directed</b>	Up to 100% of the balance in the account within 10 days after approvals are completed.	Up to 100% of the balance in the account within 10 days after approvals are completed.
<b>WSIB Total Allocation Portfolio (TAP)</b>	Up to 100% of the balance in the account based on the most recent valuation within 10 days after approvals are completed.	Up to 80% of the balance in the account distributed as a lump sum payment through the normal month-end distribution process. If 100% liquidation is requested, the remaining balance in the account will be disbursed after the final valuation has been made.

(3) **Can I still receive my defined contribution distribution if I have returned to work before receiving my funds?** If ((~~you return to work in an eligible position after~~)) all the criteria in subsection (1) of this section are met prior to DRS being notified of you being rehired, you may receive distribution from your defined contribution account.

(4) **What are my options for distributing my defined contribution funds?** You have the following options for distributions from your Plan 3 defined contribution account. Options for both the WSIB and the self-directed investment programs are combined where applicable.

(a) **Lump sum cash distribution. In either program,** you may request the entire amount of your funds in a single lump-sum payment.

(b) **Direct rollover. In either program,** you may have some or all of your funds rolled over to an eligible retirement plan or individual retirement account (IRA). If you choose a partial rollover, the remaining funds that were not rolled over will be distributed to you as a lump sum, unless you create a personal payment schedule under (d) of this subsection.

(c) **Scheduled payments. In either program,** subject to the distribution requirements of IRC section 401 (a) (9), you may request that your funds be distributed in equal payments over a specified period of time, or that a specific dollar amount be paid on a monthly basis until the account is exhausted. You may also request equal payments over your lifetime or the lifetimes of you and your beneficiary. Scheduled payments for the WSIB program are made monthly only. Scheduled pay-

ments for the self-directed program may be made monthly, quarterly, semiannually or annually.

(d) **Personalized payment plan.** In either program, you may create a personalized payment plan using any part of one or more of the distribution options provided in (a), (b), and (c) of this subsection (see examples below).

(e) **Annuity purchase.** ~~((In either program,))~~ You may purchase an annuity that pays a benefit for your lifetime or the lifetimes of you and your joint annuitant. See WAC 415-111-320 for information about purchasing an annuity ~~((and descriptions of the various annuity contracts.~~

~~(5) **Market fluctuations.** Your defined contribution account is subject to actual investment earnings (both gains and losses). These gains or losses impact the value of your account. The defined contribution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses).~~

**EXAMPLE (WSIB - Partial rollover with payments until account exhausted) :**

Pat has \$10,000 in the WSIB investment program. Pat wants to rollover \$2,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Pat selects the personalized payment schedule option and requests to do a partial rollover of \$2,000 and receive the remaining \$8,000 in equal monthly payments of \$125 until the account is exhausted (approximately 64 months).

**EXAMPLE (Self - Partial rollover with payments for fixed period) :**

Chris has \$10,000 in the self-directed investment program. Chris wants to rollover \$3,000 of the total to an IRA, but does not want to receive the remainder of the account in a lump sum payment as provided by the partial direct rollover option. Chris selects the personalized payment schedule option and requests to do a partial rollover of \$3,000 and receive the remaining \$7,000 in quarterly payments of \$250 over the next 7 years (28 quarters).

Summary of Distribution Options	
SELF	WSIB
<b>Lump Sum Cash Distribution or Direct Rollover</b>	<b>Lump Sum Cash Distribution or Direct Rollover</b>
<ul style="list-style-type: none"> <li>- Entire account</li> <li>- Partial amount</li> <li>- Remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).</li> </ul>	<ul style="list-style-type: none"> <li>- Entire account</li> <li>- Partial amount</li> <li>- Remaining funds can be distributed in a lump-sum payment or by a personalized payment schedule (see below).</li> </ul>
<b>Scheduled Payments</b>	<b>Scheduled Payments</b>
<ul style="list-style-type: none"> <li>- Equal payments</li> <li>- Monthly, quarterly, semiannual or annual</li> <li>- Specified period of time, <b>or</b></li> <li>- Until the account is exhausted</li> </ul>	<ul style="list-style-type: none"> <li>- Equal payments</li> <li>- Monthly payments only</li> <li>- Specified period of time, <b>or</b></li> <li>- Until the account is exhausted</li> </ul>

Summary of Distribution Options	
SELF	WSIB
- Payments can be combined life expectancy of you and a beneficiary.	- Payments can be combined life expectancy of you and a beneficiary.
<del>((Annuity Purchase))</del>	<b>Annuity Purchase</b>
<del>((Purchase an annuity from an insurance company - Set up to pay benefits for - Your lifetime, or - Lifetimes of you and your joint annuitant.))</del>	- Purchase an annuity, administered by the state of Washington - Set up to pay benefits for - Your lifetime, or - Lifetimes of you and your joint annuitant.
<b>In addition to the above, you may set up:</b>	<b>In addition to the above, you may set up:</b>
<b>Personalized Payment Plan</b>	<b>Personalized Payment Plan</b>
- Customized for your needs - Available <del>((for))</del> from options above.	- Customized for your needs - Available <del>((for))</del> from options above.

(5) Market fluctuations. Your defined contribution account is subject to actual investment earnings (both gains and losses). These gains or losses impact the value of your account. The defined contribution payment plans are subject to the same market fluctuations. As a result, the funding of your selected payment plan may last longer than anticipated due to market gains, or end earlier than anticipated due to market losses.

(6) **Minimum required distribution.** No later than April 1st of the calendar year following the year in which you turn age ~~((seventy-two))~~ 72, you are required to withdraw a minimum amount from your defined contributions annually. (Prior to January 2020, required minimum distributions began at age ~~((seventy and one-half))~~ 70.5.) Subsequent withdrawals must be taken by December 31st of each year. If you are still working at age ~~((seventy-two))~~ 72, distribution is required to begin by April 1st the year following separation.

(a) Calculation. Your required distribution is calculated each year based on your account balance as of December 31st of the prior year.

(b) Amount. If your required distribution amount is calculated to be less than \$10, your distribution will be set at \$10. If your entire account balance is less than \$10, your required amount will be your entire account balance.

(7) See RCW 41.34.070 for additional information.

[Statutory Authority: RCW 41.50.050. WSR 20-17-006, § 415-111-310, filed 8/5/20, effective 9/5/20. Statutory Authority: RCW 41.50.050(5). WSR 15-19-027, § 415-111-310, filed 9/8/15, effective 10/9/15. Statutory Authority: RCW 41.50.050(5) and 41.50.088. WSR 05-24-050, § 415-111-310, filed 12/1/05, effective 1/1/06. Statutory Authority: RCW 41.50.050(5), 41.34.070(3). WSR 03-19-120, § 415-111-310, filed 9/17/03, effective 11/1/03. Statutory Authority: RCW 41.50.050(5) and 41.34.070. WSR 02-03-120, § 415-111-310, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-111-310, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

**WAC 415-111-320 May I purchase a life annuity with my Plan 3 defined contribution account?** Any time after you become eligible to withdraw funds from your Plan 3 account, you may use part or all of your funds to purchase a life annuity ~~((according to this section. To purchase a))~~ administered by the state of Washington. It is named the Total Allocation Portfolio (TAP) annuity ((that is administered by the state of Washington you must use funds that are in the Washington state investment board (WSIB) investment program. To purchase an annuity through an insurance company that is offered by the self-directed investment program, you must use funds that are in the self-directed investment program)), and it provides payments monthly.

(1) **What is a life annuity?** A life annuity is a contract that provides a guaranteed income for the rest of your life in exchange for a lump-sum dollar amount you pay up front. The contract specifies the amount you pay to purchase the annuity, the amount you will receive each month, and any other terms and conditions.

(a) **A single life annuity** is based on your lifetime. It provides guaranteed payments for as long as you live. The payments stop upon your death.

(b) **A joint life annuity** is based on two lifetimes, yours and another person that you choose (referred to as your joint annuitant). It provides guaranteed payments to you during your lifetime, and then, if your joint annuitant survives you, to your joint annuitant for the remainder of his/her lifetime. The payments stop when both you and your joint annuitant die.

~~((c) **A term-certain Single life annuity** is based on your lifetime. It provides you with regular payments for as long as you live. It also guarantees the payments for a specific, predetermined period of time (term-certain). If you die before the specified period of time, payments will continue to your beneficiary for the balance of the specified period.~~

~~(d) **A term-certain Joint life annuity** is based on two lifetimes, yours and your joint annuitant's. It provides regular payments for as long as you or your joint annuitant lives. It also guarantees those payments for a specific, predetermined period of time (term-certain). If you and your joint annuitant should both die before the specified period of time, payments will continue to your beneficiary for the balance of the specified period.~~

**Example (term-certain Joint life annuity):**

John purchased a 20-year term-certain joint life annuity. He received monthly payments until his death 10 years later. Upon John's death, Mary, John's joint annuitant, will receive payments for the duration of her life.

- If Mary lives for 5 years after John's death, upon her death the annuity will make payments to John's beneficiary for 5 years, the remainder of the 20-year term.
- If Mary lives for 5 years after John's death, upon her death the annuity will make payments to John's beneficiary for 5 years, the remainder of the 20-year term.

~~(2) **Are the life annuities offered by each investment program different?** The life annuities offered through the WSIB investment program and the self-directed investment program have distinct features~~

and options. Each program may offer some or all of the annuities described in subsection (1) of this section. Minimum purchase price, payment frequency, survivorship percentages, length of term certain annuities, and other optional features differ between programs as well.

~~(3-))~~ **(2) How is the original purchase price of the ((life)) TAP annuity determined?** You ~~((will choose how much of your defined contribution funds to use as your original purchase price. The minimum purchase price depends on the type of annuity you purchase:))~~ decide how much of your defined contribution funds to use for the original purchase. The minimum purchase price for a TAP annuity is ~~((twenty-five thousand dollars and the minimum purchase price for an annuity through a self-directed investment program insurance company is five thousand dollars.~~

~~The minimum purchase price for a life annuity is subject to change.~~

~~(4-))~~ \$25,000.

**(3) How are the monthly annuity payments calculated?** The amount of your monthly annuity payment is based on various actuarial assumptions, including without limitation, assumptions about life expectancy and anticipated investment returns. The amount of your monthly annuity payment will vary depending on:

(a) The original purchase price;

(b) Your age;

(c) The age of your joint annuitant (if any); and

(d) The survivorship percentage you select on a joint annuity (if any) ~~(; and~~

~~(e) Other features of your specific annuity, including, but not limited to, COLAs or refunds of undistributed balances upon your death)).~~

~~((5-))~~ **(4) May I cancel my purchase of an annuity contract?**

~~((Your contract will specify a period of time in which you can cancel your decision to purchase the annuity. Once))~~ You may cancel your annuity purchase during the rescission period specified in your annuity contract. After the rescission period expires, your decision is irrevocable.

~~((6-))~~ **(5) Can the terms of the annuity be changed after the rescission period expires?** ~~((You may not make any changes after the rescission period unless your annuity contract explicitly states otherwise. Some contracts allow you to make changes in specific circumstances. For instance,))~~ You may make changes to ((an)) your TAP annuity ((purchased through the Washington state investment board investment program)) only as follows:

(a) If you name someone other than your spouse as the joint annuitant, you may convert to a single life annuity at any time after your payments begin. This option may only be used once and is irrevocable.

(b) If you marry after purchasing a single life annuity, you may convert to a joint life annuity and name your new spouse as joint annuitant, provided that:

(i) Your monthly annuity payment is not subject to property division pursuant to a dissolution order (definition of dissolution order in RCW 41.50.500 includes orders of legal separation);

(ii) The selection is made during a one-year window on or after the date of the first anniversary and before the second anniversary of your marriage; and

(iii) You provide satisfactory proof of your new marriage and your new spouse's birth date.

~~((7))~~ **(6) What are the tax consequences of a life annuity?**

(a) You, your joint annuitant or your beneficiary may be liable for federal and/or state taxes on payments from your annuity in the year in which they are received. You will receive an annual statement indicating the taxable portion of your annuity payments.

(b) For a TAP annuity, if you do not submit a tax withholding Form W-4P (~~to the department~~) before your first payment, taxes will be withheld according to Internal Revenue Service requirements (~~(using a filing status of married with three exemptions)~~) and defaults.

(c) The department does not:

(i) Guarantee that payments should or should not be designated as exempt from federal income tax;

(ii) Guarantee that it was correct in withholding or not withholding federal taxes from benefit payments to you;

(iii) Withhold any amounts for state taxes or liabilities from your payments;

(iv) Represent or guarantee any particular federal or state income, payroll, personal property or other tax consequence because of the department's determination of the taxable status of a distribution; or

~~((iv))~~ (v) Assume any liability for your compliance with the Internal Revenue Code.

~~((8))~~ **(7) How do I purchase a ((life)) TAP annuity?** (~~((a) The forms required to purchase an annuity and the applicable directions are available on the department's website or upon request from the department, and include:~~

~~(i) Plan 3 Request for Payment of Defined Contributions Funds Form;~~

~~(ii) Plan 3 Annuity Payment Request Form;~~

~~(iii))~~ Complete the application, and include:

(a) Spousal consent form, if married and not providing a survivorship option for your spouse;

~~((iv))~~ (b) Proof of your birth date;

~~((v))~~ (c) Proof of your joint annuitant's birth date, if applicable; and

~~((vi))~~ (d) Tax withholding Form W-4P.

~~((b) You may transfer funds from one investment program to the other in order to have sufficient funds in the appropriate investment program to cover the cost of the annuity purchase.~~

~~(9))~~ **(8) What if there is an error in my contract?** Carefully examine your contract upon receipt. If there is an error or omission, you must report the error or omission immediately according to the instructions in your contract.

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-111-320, filed 8/28/13, effective 10/1/13; WSR 10-16-086, § 415-111-320, filed 7/30/10, effective 9/1/10. Statutory Authority: RCW 41.50.050(5) and 41.50.088. WSR 05-24-050, § 415-111-320, filed 12/1/05, effective 1/1/06.]

OTS-3907.1

AMENDATORY SECTION (Amending WSR 21-07-044, filed 3/11/21, effective 4/11/21)

**WAC 415-501-485 How do I obtain a distribution?** Distribution from the plan is governed by Internal Revenue Code Sections 401 (a) (9) and 457(d); the treasury regulations interpreting these sections; and these rules to the extent they are not inconsistent with the Internal Revenue Code. The options for distribution are available from the department's ~~((designated record keeper))~~ recordkeeper.

(1) **Date of distribution.** You may choose the date on which to begin distribution from your deferred compensation account, subject to the requirements in (a) through (c) of this subsection.

(a) **Earliest date.** You may not begin distribution prior to your termination of employment, with the following exceptions:

(i) A distribution for an unforeseeable emergency under WAC 415-501-510;

(ii) A voluntary in-service distribution under subsection (4) of this section;

(iii) A distribution from funds that were rolled into the deferred compensation account (may be subject to tax penalties); or

(iv) An in-service distribution in any calendar year in which you will reach age ~~((seventy and one-half))~~ 70.5 or more.

(b) **Latest date.** You must begin distribution on or before April 1st of the calendar year following the latter of:

(i) The calendar year in which you reach age ~~((seventy-two))~~ 72;

or

(ii) The calendar year in which you retire.

(c) If you do not choose a distribution date, the department will begin distribution according to the minimum distribution requirements in IRC Section 401 (a) (9).

(2) **Method of distribution.** Payment options include a lump sum payment, partial lump sum payment, or installment payments ~~((, or an annuity purchase))~~.

Beginning at age ~~((seventy-two))~~ 72 or when you terminate employment, whichever comes later, payment must be in an amount to satisfy minimum distribution requirements in IRC Section 401 (a) (9).

(3) **Voluntary in-service distribution at any age.** You may choose to withdraw the total amount payable to you under the plan while you are employed if the following three requirements are met:

(a) Your entire account value does not exceed ~~((five thousand dollars))~~ \$5,000;

(b) You have not previously received an in-service distribution; and

(c) You have made no deferrals during the two-year period ending on the date of the in-service distribution.

(4) **Unforeseeable emergencies.** See WAC 415-501-510.

(5) **Rehire.** If you submit an immediate lump sum or partial distribution request and the request is received in good order prior to being rehired, your distribution will be processed even if you become rehired with a DCP employer. If you are receiving installment payments or have requested to receive installment payments and then return to employment with a DCP employer, your payments from your DCP account will cease. You may request a distribution when you are again eligible consistent with these rules.

[Statutory Authority: RCW 41.50.030 and 41.50.050. WSR 21-07-044, § 415-501-485, filed 3/11/21, effective 4/11/21. Statutory Authority:



RCW 41.50.050. WSR 20-17-006, § 415-501-485, filed 8/5/20, effective 9/5/20. Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-485, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.780(10). WSR 06-04-058, § 415-501-485, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-485, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-485, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-485, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-085, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 20-17-006, filed 8/5/20, effective 9/5/20)

**WAC 415-501-487 If my beneficiary dies while receiving my accumulated deferrals, who will get the remainder of the account?** (1) If your beneficiary dies while receiving distributions, any remaining balance will be paid according to ~~((the))~~ their beneficiary election on file (see WAC 415-501-480).

~~((1))~~ (2) If there is no beneficiary election on file, the remaining balance will be paid to your beneficiary's estate.

~~((2) If your beneficiary is being paid under an annuity you purchased, distribution will be governed by the terms of the annuity contract.)~~

[Statutory Authority: RCW 41.50.050. WSR 20-17-006, § 415-501-487, filed 8/5/20, effective 9/5/20. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-487, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-487, filed 12/19/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-487, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-512-087, filed 7/29/96, effective 7/29/96.]

AMENDATORY SECTION (Amending WSR 20-17-006, filed 8/5/20, effective 9/5/20)

**WAC 415-501-488 How will the account be distributed if my beneficiary is my spouse?** If you die with money in your account and your beneficiary is your spouse, an account will be established in your spouse's name.

(1) The distribution options will be provided to your spouse when DCP is notified of your death. Your spouse may choose ~~((any))~~ the method of distribution ~~((annuity, periodic))~~ installment payments ~~((,))~~ or lump sum) ~~((that provides at least the))~~ and may be sub-

ject to a required minimum distribution each calendar year until your account is exhausted.

(a) The department must receive your spouse's election at least ~~((thirty))~~ 30 days before distribution is to begin.

(b) Receiving more than the required minimum distribution during one calendar year does not excuse your spouse from taking the required minimum in any calendar year to which the required minimum applies.

(2) Required minimum distribution. ~~((a) First required distribution if you die before your "required beginning date" (see WAC 415-501-485 (1)(b))).~~ Beginning in the later of:

~~(i) The calendar year following the calendar year of your death; or~~

~~(ii) The calendar year you would have attained age seventy-two, your spouse must receive the required minimum distribution. This distribution must be taken by December 31st of the applicable calendar year. (Prior to January 2020, the age for required minimum distributions was seventy and one-half.)~~

~~(b) First required distribution if you die after your "required beginning date" (see WAC 415-501-485 (1)(b)), your spouse must receive the required minimum distribution during the calendar year following the year of your death. The distribution must be taken by December 31st of the applicable calendar year.~~

~~(c) Your spouse must receive the required minimum distribution during each subsequent calendar year until the account is exhausted.~~

~~(d)) The required minimum distribution in each of the relevant calendar years is based on life expectancies set forth in the treasury regulations.~~

(3) If your spouse dies before the entire account is exhausted, the remainder of the account will be paid according to ~~((the))~~ their beneficiary election(s) on file (see WAC 415-501-480). If there is no beneficiary election on file, the remaining balance will be paid to their estate.

[Statutory Authority: RCW 41.50.050. WSR 20-17-006, § 415-501-488, filed 8/5/20, effective 9/5/20. Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-488, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-488, filed 10/29/04, effective 11/29/04.]

AMENDATORY SECTION (Amending WSR 20-17-006, filed 8/5/20, effective 9/5/20)

**WAC 415-501-491 How will the account be distributed if my beneficiary is not my spouse?** If you die with money in your account and your beneficiary is an individual other than your spouse, an account will be established in your beneficiary's name.

(1) For rules governing distribution to an entity other than an individual (e.g., a trust, estate, or organization), see WAC 415-501-493.

(2) The distribution options will be provided to your beneficiary when DCP is notified of your death ~~((. Your beneficiary may choose any method of distribution (annuity, periodic payments, or lump sum) that provides at least the required minimum distribution each calendar year until your account is exhausted))~~, and will be based on treasury rules in effect at that time.

~~((a))~~ (3) The department must receive your beneficiary's election at least ~~((thirty))~~ 30 days before distribution is to begin.

~~((b))~~ Receiving more than the required minimum distribution during one calendar year does not excuse your beneficiary from taking the required minimum in any calendar year to which the required minimum applies.

~~(3) Required minimum distribution.~~

~~(a) First required distribution if you die before your "required beginning date" (see WAC 415-501-485 (1)(b)), your beneficiary may choose to receive the required minimum distribution under either the "life expectancy rule" or the "five year rule." Your beneficiary must elect one of the two rules at least thirty days before distribution would be required to begin under the life expectancy rule. If a timely election is not received, your beneficiary will be required to receive the required minimum distribution under the "five year rule."~~

~~(i) Life expectancy rule. Distribution under this rule allows your beneficiary to spread distribution over their life expectancy. Beginning in the calendar year following the calendar year of your death, your beneficiary must receive a required minimum distribution. This distribution must be taken by December 31st of the calendar year.~~

~~(ii) Five year rule. Under this rule, the first mandatory distribution is later than under the life expectancy rule. However, the beneficiary's entire account must be distributed on or before December 31st of the fifth calendar year following the calendar year of your death.~~

~~(b) First required distribution if you die after your "required beginning date" (see WAC 415-501-485 (1)(b)), your beneficiary must receive a required minimum distribution during the calendar year following the year of your death. The distribution must be taken by December 31st of the applicable calendar year.~~

~~(c) Your beneficiary must receive a required minimum distribution during each subsequent calendar year until the account is exhausted.~~

~~(d) The required minimum distribution in each of the relevant calendar years is based on life expectancies set forth in the treasury regulations.)~~

(4) If your beneficiary dies before the entire account is exhausted, the remainder of the account will be paid according to ~~((the))~~ their beneficiary election(s) on file (see WAC 415-501-480). If there is no beneficiary election on file, the remaining balance will be paid to their estate.

[Statutory Authority: RCW 41.50.050. WSR 20-17-006, § 415-501-491, filed 8/5/20, effective 9/5/20. Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-491, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-491, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.030(2), 41.50.088(2), 41.50.770, and 41.50.780, 26 U.S.C. (Internal Revenue Code) and related tax regulations. WSR 02-01-121, § 415-501-491, filed 12/19/01, effective 1/1/02.]

AMENDATORY SECTION (Amending WSR 20-17-006, filed 8/5/20, effective 9/5/20)

**WAC 415-501-510 May I withdraw some or all of my accumulated deferrals in the event of an unforeseeable emergency?** (1) Notwithstanding any other provisions in this chapter, you may request all or a portion of your accumulated deferrals (~~(in the event of an unforeseeable emergency. Distribution will be made within sixty days following the department's approval of your request)~~) if:

(a) You are terminally ill. The department's recordkeeper will arrange for payment to you within 10 business days following application. To be eligible, the department's recordkeeper must receive documentation verifying your terminal illness along with your application.

(b) You have a qualifying unforeseeable emergency. The department's recordkeeper will distribute payment to you typically within 60 business days following application. To be eligible, the department's recordkeeper must receive documentation verifying your unforeseeable emergency, along with your application. The amount paid will be limited strictly to that amount reasonably necessary to satisfy the emergency need.

(2) For purposes of this plan, an unforeseeable emergency is severe financial hardship resulting from:

(a) A personal illness or accident or the illness or injury of a spouse or dependent who meets the definition in Section 152(a) of the Internal Revenue Code;

(b) Loss of your property due to casualty, including the need to rebuild a home following damage not otherwise covered by homeowner's insurance, e.g., as a result of natural disaster; or

(c) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond your control, such as:

(i) The imminent foreclosure of or eviction from your primary residence due to circumstances that were beyond your control;

(ii) The need to pay medical expenses, including nonrefundable deductibles as well as the cost of prescription drug medication; or

(iii) The need to pay funeral expenses of a participant's or beneficiary's spouse or dependent (as defined in Section 152(a) of the Internal Revenue Code without regard to Sections 152 (b) (1), (2), and (d) (1)).

(3) The circumstances that constitute an unforeseeable emergency depend upon the facts of each case, but, in no case will the department approve a distribution request if the financial hardship is or may be relieved:

(a) Through reimbursement or compensation by insurance or otherwise; or

(b) By liquidation of your assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or

(c) By cessation of deferrals under the plan.

(4) Examples: The following types of occurrences are not considered unforeseeable emergencies: Sending your child to college or purchasing a home.

(5) If the department denies your request for distribution, you may request a review of that decision according to the provisions of WAC 415-08-015.

[Statutory Authority: RCW 41.50.050. WSR 20-17-006, § 415-501-510, filed 8/5/20, effective 9/5/20. Statutory Authority: RCW 41.50.050(5). WSR 14-10-045, § 415-501-510, filed 4/30/14, effective 6/1/14. Statu-

tory Authority: RCW 41.50.050(5), 41.50.780(10), and 41.50.770. WSR 04-22-053, § 415-501-510, filed 10/29/04, effective 11/29/04. Statutory Authority: RCW 41.50.050(5), 41.50.770 and 41.50.780. WSR 02-02-059, § 415-501-510, filed 12/28/01, effective 1/1/02. Statutory Authority: RCW 41.50.770, [41.50.]780 and 41.50.050. WSR 00-11-104, amended and recodified as § 415-501-510, filed 5/18/00, effective 6/18/00. Statutory Authority: RCW 41.50.050. WSR 98-20-047, § 415-524-010, filed 9/30/98, effective 10/31/98. Statutory Authority: RCW 41.50.050 and 41.50.780(11). WSR 96-16-020, § 415-524-010, filed 7/29/96, effective 7/29/96.]

## WSR 22-14-103

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed July 5, 2022, 5:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-050.

Title of Rule and Other Identifying Information: WAC 246-922-300 Podiatric continuing medical education required and 246-922-310 Categories of creditable podiatric continuing medical education activities. The podiatric medical board is proposing amendments to update and clarify the continuing medical education rules for podiatric physicians.

Hearing Location(s): On August 11, 2022, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the podiatric medical board (board) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Webinar only, link [Date of Intended Adoption: August 11, 2022.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDA2MTA2NDktMDc0Mi00NDdmLThkYTAtYzNkMGNmNjYyN2I0%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%225d370fd2-d693-4979-9942-011211788fd0%22%7d; or Call-in (audio only) 1-564-999-2000, Conference ID 187 889 849#. Public may attend this virtual meeting either through computer or by telephone.</a></p></div><div data-bbox=)

Submit Written Comments to: Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, podiatric@doh.wa.gov, by August 4, 2022.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, fax 360-236-2901, TTY 711, email podiatric@doh.wa.gov, by August 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing amendments to update and clarify existing continuing medical education (CME) regulations for podiatric physicians. The proposed amendments include acceptance of maintenance of specialty board certification as meeting the full 100 hour CME requirement; clarification on how participation in residency training qualifies for CME; clarification that CME activities may be completed either in-person, by remote attendance, or through interactive online or prerecorded courses. The board also proposes changes to the numbers of hours required or allowed in the various categories of CME and adding additional options to the activities recognized under Category 3.

Reasons Supporting Proposal: The board routinely receives questions related to acceptable CME, as well as what is acceptable electronically transmitted CME offerings. The board is proposing these rule amendments to clarify the type and corresponding number of hours that are accepted to fulfill the practitioner CME requirements to maintain licensure.

Statutory Authority for Adoption: RCW 18.22.015.

Statute Being Implemented: RCW 18.22.015.

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

Name of Proponent: Washington state podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

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 Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4941, fax 360-236-2901, TTY 711, email podiatric@doh.wa.gov.

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

July 5, 2022  
Megan Maxey  
Executive Director

## OTS-3714.2

AMENDATORY SECTION (Amending WSR 16-01-106, filed 12/16/15, effective 10/1/17)

### **WAC 246-922-300 Podiatric continuing medical education required.**

(1) (~~The board encourages podiatric physicians and surgeons to deliver high-quality patient care. The board recognizes that continuing education programs designed to inform practitioners of recent developments within podiatric medicine and relative fields and review of various aspects of basic professional education and podiatric practice are beneficial to professional growth.~~) The board requires (~~participation~~) a licensed podiatric physician and surgeon to participate in podiatric continuing medical education as a mechanism to maintain and enhance competence and stay informed of recent developments within podiatric medicine and related fields.

(2) A podiatric physician and surgeon must complete (~~one hundred~~) 100 hours of continuing education every two years and comply with (~~chapter 246-12 WAC, Part 7~~) WAC 246-12-170 through 246-12-240 and WAC 246-922-310.

(3) To satisfy the continuing medical education requirements identified in subsection (2) of this section, a podiatric physician and surgeon may:

(a) Serve as a resident in an approved postgraduate residency training program; (~~or~~) such individuals shall be credited 50 hours for each year of training completed during their continuing medical education cycle;

(b) Certify or recertify within the previous four years with a specialty board recognized by the Council on Podiatric Medical Education (CPME); or

(c) Meet the requirements for participation in a maintenance of certification program for a specialty board recognized by the CPME.

[Statutory Authority: RCW 18.22.005, 18.22.015, and 18.130.050. WSR 16-01-106, § 246-922-300, filed 12/16/15, effective 10/1/17. Statutory Authority: RCW 18.22.015. WSR 99-20-096, § 246-922-300, filed 10/5/99, effective 11/5/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-922-300, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.22.015. WSR 94-05-051, § 246-922-300, filed 2/10/94, effective 3/13/94; WSR 91-10-041 (Order 158B), § 246-922-300, filed 4/25/91, effective 5/26/91.]

AMENDATORY SECTION (Amending WSR 16-01-106, filed 12/16/15, effective 10/1/17)

**WAC 246-922-310 Categories of creditable podiatric continuing medical education activities.** To meet the requirements of WAC 246-922-300, a podiatric physician and surgeon shall earn continuing medical education in the following board-approved categories; such activities may be obtained through in-person or remote attendance, or through interactive online or prerecorded courses:

(1) Category 1 - A minimum of (~~(fifty)~~) 40 hours; however, all (~~(one hundred)~~) 100 credit hours may be earned in this category. Category 1 activities include:

(a) Scientific courses or seminars approved, offered, or sponsored by the American Podiatric Medical Association and its component societies and affiliated and related organizations; (~~and~~)

(b) Scientific courses or seminars offered or sponsored by entities such as the American College of Foot and Ankle Surgery, the American Medical Association, the American Osteopathic Association, the American Heart Association, the American Diabetes Association, or the American Physical Therapy Association when offering or sponsoring continuing medical education programs related to podiatric medicine; and

(c) Scientific courses or seminars accredited by the Council on Podiatric Medical Education or the Accrediting Council for Continuing Medical Education.

(2) Category 2 - A maximum of (~~(fifty)~~) 50 hours. Category 2 activities include courses or seminars related to health care delivery offered or sponsored by entities such as nonprofit organizations, other proprietary organizations, and individuals when offering or sponsoring continuing medical education in health care delivery.

(3) Category 3 - A maximum of (~~(fifty)~~) 60 hours. Category 3 credit hours and activities include:

(a) Up to (~~(twenty)~~) 30 hours through teaching, lecturing, and publishing in a peer-reviewed, scientific journal or textbook;

(b) Up to (~~(twenty)~~) 30 hours through online prerecorded or remote-attended study and programs not otherwise specified in subsection (1) or (2) of this section;

(c) Up to (~~(twenty)~~) 30 hours through self-study including, but not limited to, specialty board examination preparation, reading books, papers, and publications, participating in journal clubs, or viewing or attending exhibits; and

(d) Up to (~~(thirty)~~) 30 hours for participation (~~(on a staff committee for quality of care or utilization review)~~) in a health care institution or government agency (~~(, such as serving on a hospital)~~):

(i) Peer-review committee;



(ii) Staff committee for subjects including, but not limited to, quality of care, utilization review, credentialing, bylaws, and medical records;

(iii) Surgical privilege credentialing to include proctoring activity; or

(iv) Serving as a board member on the podiatric medical board.

(4) One contact hour is defined as a typical (~~fifty-minute~~) 50-minute classroom instructional session or its equivalent.

(5) The board will not give prior approval for any continuing medical education. The board will accept any continuing medical education that reasonably falls within these regulations and relies upon the integrity of each individual podiatric physician and surgeon to comply with these requirements.

[Statutory Authority: RCW 18.22.005, 18.22.015, and 18.130.050. WSR 16-01-106, § 246-922-310, filed 12/16/15, effective 10/1/17. Statutory Authority: RCW 18.22.015. WSR 99-20-096, § 246-922-310, filed 10/5/99, effective 11/5/99; WSR 94-05-051, § 246-922-310, filed 2/10/94, effective 3/13/94; WSR 91-10-041 (Order 158B), § 246-922-310, filed 4/25/91, effective 5/26/91.]

**WSR 22-14-104**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
[Filed July 6, 2022, 9:00 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-04-125  
Must an employee provide proof of being fully vaccinated with one of the authorized COVID-19 vaccines as a condition of employment?, 357-19-373 What notification must an employer give a nonpermanent appointee?, 357-19-413 Must a nonpermanent employee comply with the COVID-19 vaccine requirements set forth in WAC 357-04-125?, 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160?, 357-46-195 Can an employer separate an employee for non-disciplinary reasons?, and 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?

Hearing Location(s): On August 11, 2022, at 8:30 a.m., at office of financial management (OFM), audio conference only, Dial-in 888-285-8919, Enter pin 8101730, Code (if asked) 415.

Date of Intended Adoption: August 18, 2022.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by August 4, 2022.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by August 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To place new provisions in Title 357 WAC requiring a state employee to become fully vaccinated, and an eligible candidate for a state position to provide proof of an up-to-date vaccination, or be granted an exemption and approved for an accommodation due to a disability or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine; and requiring employers to separate an employee for failure to comply with the COVID-19 vaccination requirements.

Reasons Supporting Proposal: The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impacts the life and health of all Washingtonians, as well as the economy of Washington state, and is a public disaster that affects life, health, property, or the public peace. COVID-19 vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect the health and safety of our workforce. As an employer, there is an obligation to maintain a safe and healthy work environment for all state employees. The vaccination requirements set forth in these proposed rules will help establish and maintain a healthy and safe work environment to protect the welfare of all state employees.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5) (b) (ii) for exemption.

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.

July 6, 2022  
Roselyn Marcus  
Assistant Director of Legal  
and Legislative Affairs

#### OTS-3934.1

##### NEW SECTION

**WAC 357-04-125 Must an employee provide proof of being fully vaccinated with one of the authorized COVID-19 vaccines as a condition of employment?** As a condition of employment, an employee must become fully vaccinated or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an employee's sincerely held religious belief, practice, or observance. If the exemption is granted, there must be an approved accommodation. An employee who fails to meet this condition of employment will be subject to nondisciplinary separation in accordance with WAC 357-46-195, or separation in accordance with WAC 357-19-410, or a disability separation in accordance with WAC 357-46-160.

For the purposes of this section, a person is "fully vaccinated" against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine or a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise authorized or approved by the U.S. Food and Drug Administration or listed for emergency use or otherwise approved by the World Health Organization.

[ ]

#### OTS-3935.1

##### NEW SECTION

**WAC 357-16-197 Must an eligible candidate provide proof of being up-to-date with one of the authorized COVID-19 vaccines?** After a conditional offer of employment is made, an eligible candidate must provide proof of being up-to-date with one of the authorized COVID-19

vaccines or request an exemption due to a disability and/or medical condition or if the requirement conflicts with an employee's sincerely held religious belief, practice, or observance. If the exemption is granted, there must be an approved accommodation. For the purpose of this section, a person is "up-to-date" with their COVID-19 vaccination when they have received all doses in the primary series and all boosters recommended for them by the U.S. Centers for Disease Control Advisory Committee on Immunization Practices, when they become eligible.

[]

### OTS-3936.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

**WAC 357-19-373 What notification must an employer give a nonpermanent appointee?** (1) Upon appointment, all nonpermanent appointees must be notified in writing of the conditions of their appointment and/or upon any subsequent change to the conditions of their appointment.

(2) The written notification must at a minimum contain the following information:

(a) The reason for the nonpermanent appointment in accordance with WAC 357-19-360;

(b) The hours of work and the base salary;

(c) The anticipated short-term duration or sporadic nature of the appointment;

(d) A statement regarding the receipt or nonreceipt of benefits. If the employee is to receive benefits, the statement shall include which benefits are to be received; and

(e) The right to request remedial action as provided in WAC 357-19-425.

(3) After a conditional offer of employment is made, an eligible candidate must provide proof of being up-to-date with COVID-19 vaccination in accordance with WAC 357-16-197.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-373, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-373, filed 12/21/04, effective 7/1/05.]

### NEW SECTION

**WAC 357-19-413 Must a nonpermanent employee comply with the COVID-19 vaccine requirements set forth in WAC 357-04-125?** A nonpermanent employee must comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125. A nonpermanent employee who fails to comply must be separated in accordance with WAC 357-19-410.

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## OTS-3937.1

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

**WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160?** An employer may separate an employee due to disability when any of the following circumstances exist:

(1) The employer is unable to reasonably accommodate the employee.

(2) The employer has medical documentation of the employee's inability to work in any capacity.

(3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

(4) The employer must separate a permanent employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability or medical condition and the employer is unable to reasonably accommodate the employee.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

**WAC 357-46-195 Can an employer separate an employee for nondisciplinary reasons?** An employer may separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

The employer must separate a permanent employee from employment for nondisciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.

[Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

## OTS-3938.1

AMENDATORY SECTION (Amending WSR 22-12-074, filed 5/27/22, effective 7/1/22)

**WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?** An agency's WMS recruitment and selection policy must:

- (1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;
- (2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;
- (3) Support workforce diversity and affirmative action goals;
- (4) Consider the career development of the agency's employees and other state employees;
- (5) Consider making appointments from a veterans placement program;
- (6) Ensure that hiring decisions are not based on patronage or political affiliation;
- (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;
- (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;
- (9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220;
- (10) Ensure compliance with the vaccination requirements in accordance with WAC 357-04-125 and 357-16-197.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-074, § 357-58-190, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]

**WSR 22-14-106**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed July 6, 2022, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-083.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?, 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?, 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency?, and 388-449-0230 What aged, blind, or disabled (ABD) program rules may the department implement during a state of emergency?

Hearing Location(s): On August 9, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than August 10, 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 August 9, 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 July 26, 2022, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments, currently in place via emergency adoption (WSR 22-13-171), eliminate the mid-certification review (MCR) requirement for recipients of the ABD and HEN referral program.

Reasons Supporting Proposal: Effective July 1, 2022, the supplemental operating budget provides funding for the elimination of MCR requirement for all ABD and HEN referral program recipients.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.530, and 74.62.030.

Statute Being Implemented: 2021-2023 Supplemental operating budget (section 205(21), chapter 297, Laws of 2022).

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: Erin Summers, P.O. Box 45470, Olympia, WA 98504, 253-307-2118.

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. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this 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.

July 5, 2022  
Katherine I. Vasquez  
Rules Coordinator

### SHS-4933.1

AMENDATORY SECTION (Amending WSR 20-19-006, filed 9/3/20, effective 10/4/20)

**WAC 388-400-0060 Who is eligible for aged, blind, or disabled (ABD) cash assistance?** (1) The aged, blind, or disabled (ABD) cash assistance program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals.

(2) You are eligible for ABD if you:

(a) Are:

(i) At least (~~sixty-five~~) 65 years old;

(ii) Blind as defined by the Social Security Administration (SSA); or

(iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and

(b) Are at least (~~eighteen~~) 18 years old or, if under (~~eighteen~~) 18, a member of a married couple;

(c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470, and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;

(d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(e) Meet the citizenship and alien status requirements under WAC 388-424-0015;

(f) Provide a Social Security number as required under WAC 388-476-0005;

(g) Reside in the state of Washington as required under WAC 388-468-0005;

(h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged, blind, or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210, and 388-474-0020; and

(i) Report changes of circumstances as required under WAC 388-418-0005 (~~(and)~~).

(~~(j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.~~)

(3) You aren't eligible for ABD if you:



- (a) Are eligible for temporary assistance for needy families (TANF) benefits;
- (b) Are eligible for state family assistance (SFA) benefits;
- (c) Refuse or fail to meet a TANF or SFA eligibility rule;
- (d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause;
- (e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;
- (f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;
- (g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;
- (h) Are eligible for supplemental security income (SSI) benefits;
- (i) Are an ineligible spouse of an SSI recipient; or
- (j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(4) If you reside in a public institution and meet all other requirements, your eligibility for ABD depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) (~~Sixty-five~~) 65 years of age or older; or

(B) (~~Twenty~~) 20 years of age or younger.

(5) You aren't eligible for ABD when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement in a work release program.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.62.030, and 2020 c 322. WSR 20-19-006, § 388-400-0060, filed 9/3/20, effective 10/4/20. Statutory Authority: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090, and 2018 c 48. WSR 18-18-007, § 388-400-0060, filed 8/23/18, effective 9/23/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-040, § 388-400-0060, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-400-0060, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 20-20-004, filed 9/24/20, effective 10/25/20)

**WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?** (1) A **mid-certification review** (MCR) is a form we send you to ask about your current circumstances. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance or basic food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

(i) ~~((Only r))~~ Receive ((R)) refugee ((C)) cash ((A)) assistance as described under WAC 388-400-0030;

(ii) Receive aged, blind, or disabled (ABD) program assistance as described under WAC 388-400-0060; ~~((and are age sixty-five or older; or))~~

(iii) Receive a referral to the housing and essential needs (HEN) program as described under WAC 388-400-0070; or

~~((iii))~~ (iv) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

(3) **When we send the review form:**

If you must complete a MCR ...	We send your review form ...
(a) For one program such as basic food.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(b) For two or more programs, and all programs have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(c) For basic food and another program when either program has a certification or review period between six and <del>((twelve))</del> <u>12</u> months.	In the fifth month of your basic food certification period when you receive basic food and another program. You must complete your review by the 10th day of month six of your basic food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in one of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) Complete the review form, telling us about changes in your circumstances we ask about;

(ii) Sign and date the form;

(iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iv) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(v) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;

(ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iii) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(iv) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you (~~ten~~) 10 days notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510 and 2020 c 357. WSR 20-20-004, § 388-418-0011, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510 and 2011 c 15. WSR 13-09-034, § 388-418-0011, filed 4/11/13, effective 6/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and Public Law 109-171, TANF Interim Final Rule published in the Federal Register - Volume 71, No. 125 on June 29, 2006. WSR 08-02-053, § 388-418-0011, filed 12/28/07, effective 2/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-24-025 and 07-01-023, § 388-418-0011, filed 11/29/06 and 12/8/06, effective 10/1/07; WSR 06-13-043, § 388-418-0011, filed 6/15/06, effective 7/17/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-09-020, § 388-418-0011, filed 4/12/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-19-134, § 388-418-0011, filed 9/21/04, effective 10/1/04.]

AMENDATORY SECTION (Amending WSR 21-07-004, filed 3/4/21, effective 4/4/21)

**WAC 388-447-0130 What referral to the housing and essential needs (HEN) program rules may the department implement during a state of emergency?** During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your HEN referral program eligibility beyond the (~~twelve~~) 12 month period if the department determines you are not eligible for the aged, blind, or disabled (ABD) program at the time of your incapacity review. The postponement of this review may occur retroactively to the date the governor declares a state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "supplemental medical evidence" source in subsection (2) of WAC 388-447-0005, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond (~~ninety~~) 90 days of the date of application or incapacity review, or otherwise waive the requirement of WAC 388-447-0010 (3)(c) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for referral to the HEN program.

(~~(5) Suspend or waive mid-certification review requirements detailed in WAC 388-418-0001 for referral to the HEN program.~~)

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.09.530, 74.08A.100. WSR 21-07-004, § 388-447-0130, filed 3/4/21, effective 4/4/21.]

AMENDATORY SECTION (Amending WSR 21-07-004, filed 3/4/21, effective 4/4/21)

**WAC 388-449-0230 What aged, blind, or disabled (ABD) program rules may the department implement during a state of emergency?** During a declared state of emergency, the department may implement the following rules to help mitigate impacts to clients:

(1) Postpone review of your ABD cash eligibility beyond the (~~twenty-four~~) 24 month period required in WAC 388-449-0150. The postponement of this review may occur retroactively to the date the governor declares the state of emergency.

(2) Accept a diagnosis of a medically determinable impairment from a "treating medical source" in subsection (2) of WAC 388-449-0010, or the predictive risk intelligence system (PRISM).

(3) Accept functional medical evidence beyond (~~ninety~~) 90 days of the date of application or (~~forty-five~~) 45 days before the month of disability review, or otherwise waive the requirement of WAC 388-449-0015 (3)(e) in its entirety.

(4) Suspend or waive eligibility review requirements detailed in WAC 388-434-0005 for the ABD program.

(~~(5) Suspend or waive mid-certification review requirements detailed in WAC 388-418-0001 for the ABD program.~~)

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090,

74.08.335, 74.09.530, 74.08A.100. WSR 21-07-004, § 388-449-0230, filed 3/4/21, effective 4/4/21.]

## WSR 22-14-107

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed July 6, 2022, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-092.

Title of Rule and Other Identifying Information: Chapter 308-94A WAC, Off-road and nonhighway vehicles.

Hearing Location(s): On September 9, 2022, at 2:00 p.m.

Topic: Public hearing - chapter 308-94A WAC, Off-road and non-highway vehicles. August 9, 2022, 2:00 p.m. Pacific Time (United States and Canada).

Join Zoom meeting [https://dol-wa.zoom.us/j/81274933015?pwd=Y3hmNlB2WnZEUHpjKlpweDV4VzlnZ09,MeetingID81274933015,Passcode597575;OneTapMobile+12532158782,,81274933015#,,,,\\*597575#US\(Tacoma\),+14086380968,,81274933015#,,,,\\*597575#US\(SanJose\);MeetingID81274933015,Passcode597575](https://dol-wa.zoom.us/j/81274933015?pwd=Y3hmNlB2WnZEUHpjKlpweDV4VzlnZ09,MeetingID81274933015,Passcode597575;OneTapMobile+12532158782,,81274933015#,,,,*597575#US(Tacoma),+14086380968,,81274933015#,,,,*597575#US(SanJose);MeetingID81274933015,Passcode597575). Find your local number [https://dol-wa.zoom.us/u/kegWdgLfow](https://dol-wa.zoom.us/j/81274933015?pwd=Y3hmNlB2WnZEUHpjKlpweDV4VzlnZ09,MeetingID81274933015,Passcode597575;OneTapMobile+12532158782,,81274933015#,,,,*597575#US(Tacoma),+14086380968,,81274933015#,,,,*597575#US(SanJose);MeetingID81274933015,Passcode597575).

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of licensing (DOL) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A telephonic public hearing, without a physical space, will be held instead. Presenters and staff will participate remotely. The public may call into the hearing using the information provided for the telephonic hearing.

Date of Intended Adoption: September 10, 2022.

Submit Written Comments to: Ellis Starrett, DOL, P.O. Box 9030, Olympia, WA 98507-9030, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), fax 360-570-7827.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email [estarrett@dol.wa.gov](mailto:estarrett@dol.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendment updates agency rules so that wheeled all-terrain vehicles no longer need to be retitled after being modified for on-road use, with the effect of easing compliance and reducing administrative burden. The proposal also enacts technical clean-ups in the affected section.

Reasons Supporting Proposal: This rule change is necessary to streamline and clarify the registration and titling process for wheel[ed] all-terrain vehicles, in accordance with stakeholder input and internal process reviews. Removing the retitling requirement aids owners of wheeled all-terrain vehicles by reducing the number of transactions required to stay in compliance.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: Not applicable.

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: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; and Implementation: George Price, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0120.

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 Ellis Starrett, DOL, P.O. Box 9030, Olympia, WA 98507-9030, phone 360-902-3846.

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. Vehicle licensing subagents may experience a negligible decrease in business because a small number of transactions that would otherwise be required by rule will no longer be required. DOL data shows that approximately 1,3000 [1,300] of these transactions occurred in 2021, spread across approximately 180 subagent offices. The fee for a WATV title transaction of this nature is \$15. The aggregate reduction in collected fees for licensing subagents is estimated at \$19,500, or \$108.33 per office. This amount exceeds the threshold "minor cost" of \$100 but does not exceed either 0.3 percent of annual revenue or income, or one percent of annual payroll, for an average office.

For context, in 2021 statewide across all licensing partners, there were 758,088 original title transactions, 1,178,718 title transfers, and 585,739, with each being subject to the same \$15 fee. Additional registration work also provides further revenues to subagents or other licensing partners.

July 6, 2022  
Ellis Starrett  
Rules and Policy Manager

## OTS-3880.1

AMENDATORY SECTION (Amending WSR 11-21-068, filed 10/17/11, effective 11/17/11)

**WAC 308-94A-005 Certificates of title and registration.** (1) **Is a certificate of title issued for off-road ((and)), nonhighway vehicles, and wheeled all-terrain vehicles?** Yes, a certificate of title is issued using the same laws, rules, and procedures for other classes of vehicles. The certificate of title will indicate the comment "not eligible for road use" if a vehicle is not manufactured for road use or "modified for on-road use" if an off-road motorcycle as defined in chapter 46.04 RCW has been modified for use on highways and roads.

(2) **What are the licensing options for off-road and nonhighway vehicles described in RCW 46.04.365?** If your vehicle:

- (a) Is licensed for road use under chapter 46.16A RCW:
  - (i) Your license plates will be valid for off-road use, but you may need an ORV license in designated areas;
  - (ii) You may purchase an annual or temporary off-road use permit.
- (b) Is not manufactured for road use, you may only purchase an annual or temporary off-road use permit;
- (c) Is an off-road motorcycle as defined in chapter 46.04 RCW, you can license it for road use by complying with chapter 46.61 RCW and filing a motorcycle highway use declaration with the department((=

~~(d) Is not going to be operated on public roadways or trails, you may title your vehicle without licensing it).~~

**(3) What is an ORV use permit?**

(a) The temporary ORV use permit authorized under RCW 46.09.430 is:

- (i) Valid for sixty days from the date of application;
- (ii) Available to nonresidents and Washington residents who choose not to annually license their ORV; and
- (iii) Not transferable to another vehicle.

(b) The annual ORV registration authorized under RCW 46.09.410 is:

- (i) Valid for one year from the date of application;
- (ii) Available to Washington residents and nonresidents when the ORV is primarily used in Washington state; and
- (iii) Not transferable to another vehicle.

**(4) What do I do with the annual or temporary off-road permit?**

The permit must be ~~((+~~

~~(a-))~~ carried on the vehicle ~~((+~~

~~(b-))~~ and made available to any law enforcement officer on request.

**(5) May I operate my off-road/nonhighway vehicle using a temporary or annual vehicle use permit on any dirt, gravel road, or trail in Washington?** No. Check with local, state, or federal authorities in the areas you intend to operate the vehicle.

**(6) What are the licensing options for wheeled all-terrain vehicles described in RCW 46.09.310?**

(a) In accordance with RCW 46.09.442, you must minimally register your vehicle for off-road use by purchasing:

- (i) A metal tag; and
- (ii) An off-road tab.

(b) If your vehicle has been modified for on-road use and you are electing to use it on a public roadway, you must:

(i) Submit the wheeled all-terrain vehicle (WATV) road use declaration; and

(ii) Purchase an off-road and on-road tab.

(c) You may elect to revert to off-road use only at any subsequent registration period. Adding on-road use will not require the re-submission of a WATV road use declaration.

Note: Modifying the vehicle does not require the purchase of an on-road tab.

**(7) Do I need to retitle my wheeled all-terrain vehicle after I have modified it for on-road use?** No, that is a registration activity only.

[Statutory Authority: RCW 46.01.110. WSR 11-21-068, § 308-94A-005, filed 10/17/11, effective 11/17/11. Statutory Authority: RCW 46.16.110. WSR 06-21-024, § 308-94A-005, filed 10/9/06, effective 11/9/06. Statutory Authority: RCW 46.01.110. WSR 01-13-008, § 308-94A-005, filed 6/8/01, effective 7/9/01; WSR 99-24-013, § 308-94A-005, filed 11/22/99, effective 12/23/99.]



## WSR 22-14-108

## PROPOSED RULES

## BELLEVUE COLLEGE

[Filed July 6, 2022, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-075.

Title of Rule and Other Identifying Information: Chapter 132H-126 WAC, BC Policy 2050, student conduct code revision. Amending WAC 132H-126-100, 132H-126-400, 132H-126-410, and 132H-126-460.

Hearing Location(s): Wednesday, September 28, 20122 [2022], at 11 a.m. - 12 p.m. (PT), virtual meeting, Zoom [https://bellevuecollege.zoom.us/j/83655078121?](https://bellevuecollege.zoom.us/j/83655078121?pwd=dXM1M3UySk5aY25qSTZDNmxJYitOdz09&from=addon#success)

[pwd=dXM1M3UySk5aY25qSTZDNmxJYitOdz09&from=addon#success](https://bellevuecollege.zoom.us/j/83655078121?pwd=dXM1M3UySk5aY25qSTZDNmxJYitOdz09&from=addon#success).

Date of Intended Adoption: November 10, 2022.

Submit Written Comments to: Megan Kaptik, 3000 Landerholm Circle N.E., Bellevue, WA 98007, email [megan.kaptik@bellevuecollege.edu](mailto:megan.kaptik@bellevuecollege.edu), 425-564-2757.

Assistance for Persons with Disabilities: Contact Megan Kaptik, phone 425-564-2757, email [megan.kaptik@bellevuecollege.edu](mailto:megan.kaptik@bellevuecollege.edu).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 132H-126-100 amendment modified definitions of abuse later in life, domestic violence, economic and technological abuse, hazing; WAC 132H-126-400 amends order of precedence; WAC 132H-126-410 amended definitions of domestic violence, economic and technological abuse; and WAC 132H-126-460 removes cross-examination requirement.

Reasons Supporting Proposal: On August 10, 2021, a decision from a federal district vacated a portion of the 2020 amendments to the Title IX regulations related to cross-examination, 34 C.F.R. § 106.45 (b)(6)(i). This needs to be removed from the code.

On March 15, 2022, President Biden signed the Violence Against Women Act Reauthorization Act of 2022 (VAWA) into law. This changed the definition of domestic violence and added definitions for different aspects of domestic abuse. VAWA takes effect October 1, 2022. Third, on March 30, 2022, Governor Inslee signed Sam's Law (HB 1751) into law. This bill requires the college to update the definition of hazing and extend the prohibition to include off-campus hazing. The college must be compliant before the start of fall term.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; 34 C.F.R. § 106.45 (b)(6)(i).

Rule is necessary because of federal law and federal court decision, 34 C.F.R. § 106.45 (b)(6)(i).

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Kaptik, 3000 Landerholm Circle S.E., Mail-stop U307B, Bellevue, WA 98007, 425-564-2757.

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. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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: 34 C.F.R. § 106.45 (b) (6) (i) United States Department of Education Title IX regulations.

July 6, 2022  
Loreen M. Keller  
Associate Director of  
Policies and Special Projects

### OTS-3879.1

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-100 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits or attempts to commit, or aids, abets, incites, encourages, or assists another person to commit the following acts of misconduct:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

~~((3))~~ (4) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences, up to

and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the course syllabus and any applicable program handbook.

(a) **Cheating.** Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) **Plagiarism.** Taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. May also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Falsifying data, information, or citations in completing an academic assignment. Fabrication also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) **Multiple submissions.** Submitting the same work in separate courses without the express permission of the instructor(s).

(e) **Deliberate damage.** Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

~~((4))~~ (5) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

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

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

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

~~((5))~~ (6) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

~~((6))~~ (7) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false emails or texts to third parties using another's identity (spoofing).

~~((7))~~ (8) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

~~((8))~~ (9) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

~~((9))~~ (10) **Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.

~~((10))~~ (11) **Disruption or obstruction.** Disruption or obstruction of any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

~~((11))~~ (12) **Domestic violence.** ~~((Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(12))~~ Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who shares a child in common with the victim; or

(d) Who commits acts against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(13) **Economic abuse.** In the context of domestic violence, dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

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

~~((13))~~ (15) **Failure to comply with directive.** Failure to comply with the reasonable direction of a college official or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

~~((14))~~ (16) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

~~((15))~~ (17) **Hazing.** Hazing includes, but is not limited to, any ~~((initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.~~

~~(16))~~ act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance

which subjects the person to risk of such harm, regardless of the person's willingness to participate. Hazing does not include customary athletic events or other similar contests or competitions. Hazing is prohibited both on and off campus.

~~(17)~~ **(18) Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

~~(17)~~ **(19) Marijuana or other drugs.**

(a) **Marijuana.** The use, possession, growing, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, or the possession of marijuana paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(b) **Drugs.** The use, possession, production, delivery, sale, or being under the influence of any prescription drug or possession of drug paraphernalia, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

~~(18)~~ **(20) Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of computer time or resources to interfere with someone else's work;

(e) Use of computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of computer time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

~~(19)~~ **(21) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~(20)~~ **(22) Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported a violation of this code or college policy, provided information about a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

~~(21)~~ **(23) Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to

follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or first-aid equipment, or triggering false alarms or other emergency response systems.

~~((22))~~ (24) **Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

- (a) Invading another person's sexual privacy;
- (b) Prostituting another person;
- (c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;
- (d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;
- (e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;
- (f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or
- (g) Causing the nonconsensual indecent exposure of another person, as defined by subsection ~~((13))~~ (18) of this section.

~~((23))~~ (25) **Sexual harassment.** Unwelcome sexual- or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual- or gender-based nature that is sufficiently severe, persistent or pervasive as to:

- (a) Deny or limit the ability of a student to participate in or benefit from the college's educational program;
- (b) Alter the terms or conditions of employment; or
- (c) Create an intimidating, hostile, or offensive environment for other campus community members.

For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.

~~((24))~~ (26) **Sexual violence.** A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.

(a) Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.

(i) Effective consent cannot result from force, or threat of physical force, coercion, dishonesty, or intimidation.

(ii) Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.

(iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

(iv) Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(v) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

(d) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

(e) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of (~~eighteen~~) 18.

(f) **Statutory rape.** Consensual sexual intercourse between someone who is (~~eighteen~~) 18 years of age or older and someone who is under the age of (~~sixteen~~) 16.

(~~(+25)~~) (27) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(~~(+26)~~) (28) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.



~~(29)~~ **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased, or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

~~((27))~~ **(30) Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((28))~~ **(31) Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

~~((29))~~ **(32) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including on-campus housing policies and college traffic and parking rules.

~~((30))~~ **(33) Weapons.**

(a) Possessing, holding, wearing, transporting, storing, or exhibiting any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(i) Commissioned law enforcement personnel; or

(ii) Legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.

(c) The president or delegate may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to any terms or conditions incorporated therein.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-100, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-100, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-400 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence. Bellevue College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-400, filed 12/2/20, effective 1/2/21.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-410 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half

related. Descendant includes stepchildren and adopted children under the age of ~~((eighteen))~~ 18.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is ~~((eighteen))~~ 18 years of age or older and someone who is under the age of ~~((sixteen))~~ 16.

(4) **Domestic violence.** ~~((Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim))~~ Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who shares a child in common ~~((, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person))~~ with the victim; or

(d) Who commits acts against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) **Economic abuse.** In the context of domestic violence, dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

(7) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices,

online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

(8) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-410, filed 12/2/20, effective 1/2/21.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-460 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 reported misconduct; or

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

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

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

~~((6))~~ **(5) Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of

1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-460, filed  
12/2/20, effective 1/2/21.]