

## WSR 22-22-009

## PROPOSED RULES

## DEPARTMENT OF REVENUE

[Filed October 20, 2022, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-058.

Title of Rule and Other Identifying Information: WAC 458-12-030  
County appraisers' salary and classification plan and 458-12-035  
Standard forms.

Hearing Location(s): On December 14, 2022, at 10:00 a.m., hybrid, in-person and virtual meeting. In person at 6400 Linderson Way [S.W.], Room 252, Tumwater, WA. To attend virtually by phone or video conference, contact Sierra Crumbaker at SierraC@dor.wa.gov for dial-in/login information.

Date of Intended Adoption: December 28, 2022.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606, by December 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to repeal WAC 458-12-030 because it is outdated, as the department of revenue (DOR) does not perform the functions listed in the rule. WAC 458-12-035 is being amended to streamline the process for county assessors and county treasurers when updating forms normally provided by DOR.

Reasons Supporting Proposal: DOR is proposing to repeal WAC 458-12-030 because the rule is outdated and the department is not the agency responsible for establishing and maintaining the salary and classification plans for appraisers employed by county assessors as described in RCW 36.21.011.

DOR is proposing to update WAC 458-12-035 to clarify the process used by county assessors and county treasurers wanting to amend forms statutorily required to be provided by DOR in Title 84 RCW.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Statute Being Implemented: RCW 36.21.011 and 84.08.020.

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

Name of Proponent: DOR, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined in RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. While the proposed rule draft for WAC 458-12-035 does not meet the exemptions in chapter 34.05 RCW, the amendments do not impose more-than-minor costs on businesses, as defined in RCW 19.85.020(2), as the amendments do not propose any new requirements

not already provided for in statute. The information being incorporated into this rule is being provided to county treasurers and county assessors to simplify the process if a county wants to make changes to department-provided forms as provided for in Title 84 RCW.

October 20, 2022  
Atif Aziz  
Rules Coordinator

## OTS-3968.1

AMENDATORY SECTION (Amending Order PT 68-6, filed 4/29/68)

**WAC 458-12-035 ((Standard)) Department approved forms.** ((All forms required to carry out the provisions of the statutes which are now used, or to be used in the future in connection with the assessment and collection of taxes, shall meet the standards as prescribed by the department of revenue. The forms now in use in the county assessors' and treasurers' offices shall be submitted to the department of revenue for review and approval upon request by the department.

It will be the policy of the department of revenue to permit use of all forms presently in use if, in the department's judgment, they adequately meet the standards and fulfill the statutory requirements. Once the department has approved the forms used in an office, the forms may be used until, in the opinion of the department, the forms need revision because of obsolescence caused by time or statutory change.

All forms shall be submitted in duplicate so that one copy of the approved form may be retained for the department of revenue.

After a complete review of all county and state forms, the state department of revenue will compile and adopt an official standard forms list for each county.))

(1) Introduction. RCW 84.08.020 requires the department of revenue (department) to prescribe all forms to be used in the assessment and collection of property taxes under Title 84 RCW. Certain modifications to these forms, including electronic forms, by county assessors and county treasurers, must be reviewed by the department. Requests for review of modified forms must be submitted to the department in the manner described in this rule.

(2) Forms currently in use. The department maintains a list of forms it is responsible for updating. These forms are used by county assessors and county treasurers to carry out the provisions of the assessment and collection of property taxes under Titles 84 RCW and 458 WAC. The department will permit the use of department forms revised by county assessors and treasurers if, in the department's judgment, they adequately meet the applicable statutory and program requirements.

(a) Once the department approves proposed revisions to a form, that form may be used until it needs revision because of obsolescence caused by time or statutory change. Each county assessor and treasurer is responsible for ensuring their office is utilizing the most current version of a form.

(b) Department approval is not required for changes to a form's contact information, such as a county employee's name, an office ad-

dress, a phone number, an email address, hours of operation, etc. For example, RCW 84.34.030 requires that applications to classify land as farm and agricultural land be made to the county assessor on forms prepared by the department and supplied by the county assessor. If a county assessor elects to alter the department's application form, other than the changes described in this subsection, it must send its proposed changes to the department for approval.

(3) **Forms requiring approval.** A county choosing to use a modified form, with modifications other than those listed in subsection (2)(b) of this rule and the form has not been reviewed by the department, must submit the form to the department for review and approval to ensure it meets the applicable statutory and program requirements under Titles 84 RCW and 458 WAC, as follows:

(a) The county must electronically submit the form for review to the department's property tax division and provide the proposed form revisions;

(b) The department will review the proposed form revisions and notify the county if it approves the changes or if additional changes need to be made; and

(c) Once the department approves the form revisions and the county updates the form for public use, the county must send an electronic copy of the final revised form to the department's property tax division. The department will maintain a copy of the revised form as described in subsection (4) of this rule. If a county chooses not to make the required changes, it must use the department's version of the form at dor.wa.gov.

(4) **Form retention.** The department will keep an electronic copy of each form it has reviewed and approved for a county when the form is required to be provided by the department under Title 84 RCW or 458 WAC.

(Rule derived from RCW 84.08.020; 84.48.010; 84.56.050; TCR 10-30-1940.)

[Order PT 68-6, § 458-12-035, filed 4/29/68.]

## OTS-3971.1

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-12-030	County appraisers' salary and classification plan.
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## WSR 22-22-015

## PROPOSED RULES

## HORSE RACING COMMISSION

[Filed October 21, 2022, 8:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-014.

Title of Rule and Other Identifying Information: WAC 260-49-070  
Distribution of source market fees.

Hearing Location(s): On December 7, 2022, at 9:30 a.m., via Zoom teleconference. Link will be available at [www.whrc.wa.gov](http://www.whrc.wa.gov) prior to hearing.

Date of Intended Adoption: December 7, 2022.

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the percentage of distribution of the source market fees to offset additional parimutuel tax increase.

Reasons Supporting Proposal: Continuing current distributions create a negative financial impact on stakeholders created by reducing purses and operating capital for the racing association.

Statutory Authority for Adoption: RCW 67.16.020.

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

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

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

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

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

November 21, 2022  
Douglas L. Moore  
Executive Secretary

**OTS-4097.1**

AMENDATORY SECTION (Amending WSR 22-02-047, filed 1/3/22, effective 2/3/22)

**WAC 260-49-070 Distribution of source market fee.** (1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) One hundred percent of the total source market fee directly to the class 1 racing association.

(b) The class 1 racing association shall submit monthly (~~eight~~) 12.5 percent of the total source market fee to the commission of which two and one-half percent to be deposited into the Washington bred owners' bonus fund and (~~five and one-half~~) 10 percent to be deposited into the commission's operating account.

(c) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

(d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

[Statutory Authority: RCW 67.16.020. WSR 22-02-047, § 260-49-070, filed 1/3/22, effective 2/3/22; WSR 20-19-062, § 260-49-070, filed 9/11/20, effective 10/12/20; WSR 11-17-056, § 260-49-070, filed 8/15/11, effective 9/15/11. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 09-21-015, § 260-49-070, filed 10/9/09, effective 11/9/09; WSR 05-19-015, § 260-49-070, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 67.16.020. WSR 04-21-053, § 260-49-070, filed 10/18/04, effective 11/18/04.]

WSR 22-22-041  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 22-13—Filed October 26, 2022, 8:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-049 on August 30, 2022.

Title of Rule and Other Identifying Information: Periodic status review: Columbian white-tailed deer. WAC 220-200-100 and 220-610-010.

Hearing Location(s): On December 9-10, 2022, at 8:00 a.m., Clarkston, Washington. Information on how to register to testify at the public hearing is available at <http://wdfw.wa.gov/about/commission.meetings>, or by contacting the commission office at 360-902-2267.

Date of Intended Adoption: On or after December 9, 2022.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email [WhiteTailedDeer@PublicInput.com](mailto:WhiteTailedDeer@PublicInput.com), fax 360-902-2162, <https://publicinput.com/WhiteTailedDeer>, by November 23, 2022. SEPA comments [whitetaileddeersepa@PublicInput.com](mailto:whitetaileddeersepa@PublicInput.com), phone 855-925-2801, project code: 4007.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <http://wdfw.wa.gov/accessibility/requests-accommodation>, by November 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to conservation gains, in particular the success of translocated populations, Columbian white-tailed deer may no longer meet the definition of endangered in the state of Washington. We propose changing their classification to threatened to better align with the definition, reflect the reduced conservation concern, and highlight the success.

Reasons Supporting Proposal: We are no longer uncertain about the viability of the Ridgefield subpopulation given the encouraging projections of the viability assessment for the subpopulation. We are now much more confident that the deer at Ridgefield have established into a viable subpopulation with significant growth potential.

With this development, we believe the lower Columbia River population no longer fits the definition of endangered as it is no longer under serious threat of extinction (WAC 220-610-010).

The Washington department of fish and wildlife (WDFW) thus recommends reclassifying the Columbian white-tailed deer to threatened.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.08.030.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, and 77.08.030.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

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

This 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).  
 Scope of exemption for rule proposal:  
 Is fully exempt.

October 26, 2022  
 Chris Fredley  
 Agency Rules Analyst

NEW SECTION [AMENDATORY SECTION (Amending WSR 21-20-010, filed 9/23/21, effective 10/24/21)]

**WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.** Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
sea otter	<i>Enhydra lutris</i>
green sea turtle	<i>Chelonia mydas</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
American white pelican	<i>Pelecanus erythrorhynchos</i>
<u>Columbian white-tailed deer</u>	<u><i>Odocoileus virginianus leucurus</i></u>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	<i>Eschrichtius robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>

Common Name	Scientific Name
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
Humboldt's flying squirrel	<i>Glaucomys oregonensis</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-20-010 (Order 21-196), § 220-200-100, filed 9/23/21, effective 10/24/21. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-13-032 (Order 21-60), § 220-200-100, filed 6/10/21, effective 7/11/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047. WSR 18-17-153 (Order 18-207), § 220-200-100, filed 8/21/18, effective 9/21/18. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-20-030 (Order 17-254), § 220-200-100, filed 9/27/17, effective 10/28/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), re-codified as § 220-200-100, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-02-084 (Order 17-02), § 232-12-011, filed 1/4/17, effective 2/4/17; WSR 15-10-021 (Order 14-95), § 232-12-011, filed 4/27/15, effective 5/28/15. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 08-03-068 (Order 08-09), § 232-12-011, filed 1/14/08, effective 2/14/08; WSR 06-04-066 (Order 06-09), § 232-12-011, filed 1/30/06, effective 3/2/06. Statutory Authority: RCW 77.12.047, 77.12.655, 77.12.020. WSR

02-11-069 (Order 02-98), § 232-12-011, filed 5/10/02, effective 6/10/02. Statutory Authority: RCW 77.12.047. WSR 02-08-048 (Order 02-53), § 232-12-011, filed 3/29/02, effective 5/1/02; WSR 00-17-106 (Order 00-149), § 232-12-011, filed 8/16/00, effective 9/16/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770. WSR 00-10-001 (Order 00-47), § 232-12-011, filed 4/19/00, effective 5/20/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-04-017 (Order 00-05), § 232-12-011, filed 1/24/00, effective 2/24/00. Statutory Authority: RCW 77.12.020. WSR 98-23-013 (Order 98-232), § 232-12-011, filed 11/6/98, effective 12/7/98. Statutory Authority: RCW 77.12.040. WSR 98-10-021 (Order 98-71), § 232-12-011, filed 4/22/98, effective 5/23/98. Statutory Authority: RCW 77.12.040 and 75.08.080. WSR 98-06-031, § 232-12-011, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 77.12.020. WSR 97-18-019 (Order 97-167), § 232-12-011, filed 8/25/97, effective 9/25/97. Statutory Authority: RCW 77.12.040, 77.12.020, 77.12.030 and 77.32.220. WSR 97-12-048, § 232-12-011, filed 6/2/97, effective 7/3/97. Statutory Authority: RCW 77.12.020. WSR 93-21-027 (Order 615), § 232-12-011, filed 10/14/93, effective 11/14/93; WSR 90-11-065 (Order 441), § 232-12-011, filed 5/15/90, effective 6/15/90. Statutory Authority: RCW 77.12.040. WSR 89-11-061 (Order 392), § 232-12-011, filed 5/18/89; WSR 82-19-026 (Order 192), § 232-12-011, filed 9/9/82; WSR 81-22-002 (Order 174), § 232-12-011, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-011, filed 6/1/81.]

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

NEW SECTION [AMENDATORY SECTION (Amending WSR 21-20-010, filed 9/23/21, effective 10/24/21)]

**WAC 220-610-010 Wildlife classified as endangered species.** Endangered species include:

Common Name	Scientific Name
Oregon vesper sparrow	<i>Pooecetes gramineus affinis</i>
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
North Pacific right whale	<i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<del><i>Odocoileus virginianus leucurus</i></del>
woodland caribou	<i>Rangifer tarandus caribou</i>
Columbian sharp-tailed grouse	<i>Tympanuchus phasianellus columbianus</i>
sandhill crane	<i>Grus canadensis</i>

Common Name	Scientific Name
snowy plover	<i>Charadrius nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>
Pinto abalone	<i>Haliotis kamtschatkana</i>
Greater sage grouse	<i>Centrocercus urophasianus</i>
Ferruginous hawk	<i>Buteo regalis</i>

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-20-010 (Order 21-196), § 220-610-010, filed 9/23/21, effective 10/24/21. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-13-032 (Order 21-60), § 220-610-010, filed 6/10/21, effective 7/11/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-07-019 (Order 21-15), § 220-610-010, filed 3/5/21, effective 4/5/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047. WSR 19-13-013 (Order 18-120), § 220-610-010, filed 6/7/19, effective 7/8/19; WSR 18-17-153 (Order 18-207), § 220-610-010, filed 8/21/18, effective 9/21/18. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-20-030 (Order 17-254), § 220-610-010, filed 9/27/17, effective 10/28/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-610-010, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-02-084 (Order 17-02), § 232-12-014, filed 1/4/17, effective 2/4/17; WSR 16-11-023 (Order 16-84), § 232-12-014, filed 5/6/16, effective 6/6/16; WSR 15-10-022 (Order 14-95), § 232-12-014, filed 4/27/15, effective 5/28/15. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 06-04-066 (Order 06-09), § 232-12-014, filed 1/30/06, effective 3/2/06; WSR 04-11-036 (Order 04-98), § 232-12-014, filed 5/12/04, effective 6/12/04. Statutory Authority: RCW 77.12.047, 77.12.655, 77.12.020. WSR 02-11-069 (Order 02-98), § 232-12-014, filed 5/10/02, effective 6/10/02. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-04-017 (Order 00-05), § 232-12-014, filed 1/24/00, effective 2/24/00. Statutory Authority: RCW 77.12.020. WSR 98-23-013 (Order 98-232), § 232-12-014, filed 11/6/98, effective 12/7/98; WSR 97-18-019

(Order 97-167), § 232-12-014, filed 8/25/97, effective 9/25/97; WSR 93-21-026 (Order 616), § 232-12-014, filed 10/14/93, effective 11/14/93. Statutory Authority: RCW 77.12.020(6). WSR 88-05-032 (Order 305), § 232-12-014, filed 2/12/88. Statutory Authority: RCW 77.12.040. WSR 82-19-026 (Order 192), § 232-12-014, filed 9/9/82; WSR 81-22-002 (Order 174), § 232-12-014, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-014, filed 6/1/81.]

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

## WSR 22-22-044

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 26, 2022, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-099.

Title of Rule and Other Identifying Information: The department is proposing an amendment to enhanced services facilities' WAC 388-107-0630 Training and home care aide certification requirements.

Hearing Location(s): On December 6, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not before December 7, 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 December 6, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6498, fax 360-664-6185, TTY 711 relay service, email [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov), by 5:00 p.m. on November 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to ensure WAC 388-107-0630 is consistent with the requirements of chapter 388-112A WAC for training and home care aide certification, to support the health and safety of residents in this setting, and to benefit enhanced services facilities' business owners.

Reasons Supporting Proposal: During the COVID-19 pandemic, this rule was suspended to allow enhanced services facilities to hire home care aides who could not meet the training requirements of chapter 388-112A WAC, which was suspended under Governor Proclamation 20-10. The department has since adopted rules to address the backlog of home care aides needing training or testing for certification, or both, caused by the COVID-19 pandemic. The training rules allow additional time for home care aides to be trained and certified by requiring them to complete training requirements by certain dates based on their initial hire date. This amendment to WAC 388-107-0630 will align enhanced services facilities' requirements with the newly adopted requirements in chapter 388-112A WAC.

Statutory Authority for Adoption: RCW 70.97.230.

Statute Being Implemented: Chapter 70.97 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Sondra Haas, P.O. Box 45600, Olympia, WA 98504, 360-688-0715; Implementation and Enforcement: Mike Anbesse, P.O. Box 45600, Olympia, WA 98504, 360-725-2401.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts "Rules adopting or incorporating by reference without material change ... Washington state statutes ... if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule." These rules will adopt, without material change, requirements of RCW 70.97.080(1) and chapter 18.88B RCW, which regulate the same subject matter and conduct as the adopting rule.

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

Is exempt under RCW 19.85.025(3) as the rules 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.

Is exempt under RCW 34.05.310 (4)(c).

Explanation of exemptions: RCW 34.05.310 (4)(c) exempts "Rules adopting or incorporating by reference without material change ... Washington state statutes ... if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule." These rules will adopt, without material change, requirements of RCW 70.97.080(1) and chapter 18.88B RCW, which regulate the same subject matter and conduct as the adopting rule.

Scope of exemption for rule proposal:

Is fully exempt.

October 25, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4944.1

AMENDATORY SECTION (Amending WSR 18-20-040, filed 9/25/18, effective 10/26/18)

**WAC 388-107-0630 Training and home care aide certification requirements.** (1) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(2) Continuing education requirements are outlined in chapter 388-112A WAC; registered nurses and licensed practical nurses are exempt from the long-term care worker continuing education requirement.

(3) The enhanced services facility must ensure staff persons meet training requirements in effect on the date hired, including requirements described in chapter 388-112A WAC, unless exempt under RCW 18.88B.041.

(4) The enhanced services facility must ensure all enhanced services facility administrators, or their designees, and caregivers who are not exempt under subsection (1) of this section meet the long-term care worker training requirements of chapter 388-112A WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic training;

(c) Specialty for dementia and, mental illness (~~and/~~) or developmental disabilities or both when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(5) The enhanced services facility must ensure that all staff receives appropriate training and orientation to perform their specific job duties and responsibilities.

(6) The enhanced services facility must ensure the following staff obtains home care aide certification(~~, unless exempt under WAC 246-980-070~~) if required by this section, chapters 246-980, or 388-112A WAC:

(a) All long-term care workers(~~, within two hundred days of hire~~);

(b) All enhanced services facility applicants, before licensure;

(c) All enhanced services facility administrators (~~within two hundred days of hire,~~) ; and

(d) Any other staff who will provide direct care and services to residents.

[Statutory Authority: Chapter 70.97 RCW. WSR 18-20-040, § 388-107-0630, filed 9/25/18, effective 10/26/18; WSR 14-19-071, § 388-107-0630, filed 9/12/14, effective 10/13/14.]

## WSR 22-22-051

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 27, 2022, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-060.

Title of Rule and Other Identifying Information: WAC 182-550-3830  
Adjustments to inpatient rates.

Hearing Location(s): On December 6, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_ap92iSBET3y1jnHyL4hUig](https://us02web.zoom.us/webinar/register/WN_ap92iSBET3y1jnHyL4hUig). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: December 7, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by December 6, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by November 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-550-3830 to align with ESSB 5693 by extending the rate for an additional year and adding language for an additional increased rate for providers who take single bed certifications. Language was also updated for readability.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: ESSB 5693, section 211(52), chapter 297, Laws of 2022; RCW 41.05.021, 41.05.160.

Rule is necessary because of state court decision, ESSB 5693, section 211(52), chapter 297, Laws of 2022.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Melissa Craig, P.O. Box 55687, Olympia, WA 98504-5687, 360-725-0938.

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

October 27, 2022  
Wendy Barcus  
Rules Coordinator

**OTS-4151.1**

AMENDATORY SECTION (Amending WSR 22-03-008, filed 1/6/22, effective 2/6/22)

**WAC 182-550-3830 Adjustments to inpatient rates.** (1) The medic-aid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates at rebase:

- (a) Wage index adjustment;
- (b) Direct graduate medical education (DGME); and
- (c) Indirect medical education (IME).

(2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

(3) The agency does not update the statewide average DRG factor between rebasing periods, except:

(a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and

(b) When directed by the legislature.

(4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of (~~twelve~~) 12 consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than (~~eighteen~~) 18 months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's website as of May 1st of the rate-setting year.

~~(7) ((The agency considers an in-state hospital to qualify for a rate enhancement if all of the following conditions apply. The hospital must:~~

~~(a-)) Sole community hospitals.~~

~~(a) For sole community hospitals' rate enhancements, the agency multiplies an in-state hospital's specific conversion factor and per diem rates by a multiplier if the hospital meets all the following criteria per RCW 74.09.5225:~~

~~(i) Be certified by CMS as a sole community hospital as of January 1, 2013;~~

~~((b-)) (ii) Have a level III adult trauma service designation from the Washington state department of health (DOH) as of January 1, 2014;~~

~~((c-)) (iii) Have less than ((one hundred fifty)) 150 acute care licensed beds in fiscal year 2011;~~

~~((d-)) (iv) Be owned and operated by the state or a political subdivision; and~~

~~((e-)) (v) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650 (;~~

~~(f) Accept single bed certification patients as of July 1, 2021, according to RCW 71.05.745.~~

~~(8) If an in-state hospital qualifies for the rate enhancement in subsection (7) of this section, effective:~~

~~(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25.~~

~~(b) July 1, 2018, through June 30, 2023, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.50.~~

~~(c) July 1, 2023, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25).~~

~~(b) As of July 1, 2021, an additional increase is applied for hospitals that accept single bed certifications per RCW 71.05.745.~~

<b>Enhancement Multiplier by Year</b>				
<b>Provider Category</b>	<b>Effective For the Dates</b>			
	<u>07/01/2015 - 06/30/2020</u>	<u>07/01/2020 - 06/30/2021</u>	<u>07/01/2021 - 06/30/2022</u>	<u>07/01/2022 - 06/30/2023</u>
<u>Sole community hospital</u>	<u>1.25</u>	<u>1.5</u>	<u>N/A</u>	<u>1.25</u>
<u>Sole community hospital accepting single bed certifications</u>	<u>N/A</u>	<u>N/A</u>	<u>1.5</u>	<u>1.5</u>

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2021 c 334 §§ 211(46) and 215(66). WSR 22-03-008, § 182-550-3830, filed 1/6/22, effective 2/6/22. Statutory Authority: RCW 41.05.021, 41.05.160, and 2019 c 415 § 211(14). WSR 20-01-075, § 182-550-3830, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-09-022, § 182-550-3830, filed 4/11/18, effective 5/12/18; WSR 15-10-014, § 182-550-3830, filed 4/23/15, effective 5/24/15; WSR 14-22-003, § 182-550-3830, filed 10/22/14, effective 11/22/14.]

## WSR 22-22-052

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 27, 2022, 2:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-061.

Title of Rule and Other Identifying Information: WAC 182-550-7500 OPPS rate and 182-550-7550 OPPS payment enhancements.

Hearing Location(s): On December 6, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_ap92iSBET3y1jnHyL4hUig](https://us02web.zoom.us/webinar/register/WN_ap92iSBET3y1jnHyL4hUig). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: December 7, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by December 6, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by November 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-550-7500 by removing duplicate language found in subsections (6), (7), and (8). The same language can be found in WAC 182-550-7550. The agency is amending WAC 182-550-7550 to align with ESSB 5693 by extending the rate for an additional year and adding language for an additional increased rate for providers who take single bed certifications. Language updated for readability.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: ESSB 5693, section 211(52), chapter 297, Laws of 2022; RCW 41.05.021, 41.05.160.

Rule is necessary because of state court decision, ESSB 5693, section 211(52), chapter 297, Laws of 2022.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Tracy Huynh, P.O. Box 55686, Olympia, WA 98504-5686, 360-725-1311.

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:  
Is fully exempt.

October 27, 2022  
Wendy Barcus  
Rules Coordinator

## OTS-4152.1

AMENDATORY SECTION (Amending WSR 22-03-008, filed 1/6/22, effective 2/6/22)

**WAC 182-550-7500 OPSS rate.** (1) The medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using all of the following:

- (a) A base conversion factor established by the agency;
- (b) An adjustment for direct graduate medical education (DGME);

and

(c) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) when the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) Base conversion factors. The agency calculates the base enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its website.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion of the base rate by multiplying the base rate by the labor factor established by medicare; then

(b) Multiplying the amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS when the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) DGME. The agency obtains the DGME information from the hospital's most recently filed medicare cost report as available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency may remove the hospital's DGME adjustment.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

$$\text{EAPG base rate} \times (.6(\text{wage index}) + .4) / (1 - \text{DGME})$$

~~((6) The agency considers an in-state hospital a sole community hospital if all the following conditions apply. The hospital must:~~

~~(a) Be certified by CMS as a sole community hospital as of January 1, 2013.~~

~~(b) Have a level III adult trauma service designation from the department of health as of January 1, 2014.~~

~~(c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.~~

~~(d) Be owned and operated by the state or a political subdivision.~~

~~(e) Accept single bed certification patients as of July 1, 2021, according to RCW 71.05.745.~~

~~(7) If the hospital meets the agency's sole community hospital (SCH) criteria listed in subsection (6) of this section, effective:~~

~~(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor by 1.25;~~

~~(b) July 1, 2018, through June 30, 2023, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.50;~~

~~(c) July 1, 2023, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.25.~~

~~(8) The formula for calculating a sole community hospital's final conversion factor is:~~

$$\text{EAPG base rate} \times (.6(\text{wage index}) + .4) / (1 - \text{DGME}) \times \text{SCH Factor}$$

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2021 c 334 §§ 211(46) and 215(66). WSR 22-03-008, § 182-550-7500, filed 1/6/22, effective 2/6/22. Statutory Authority: RCW 41.05.021, 41.05.160, and 2019 c 415 § 211(14). WSR 20-01-075, § 182-550-7500, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.05.021, 41.05.160, and 2018 c 299 § 213 (1)(fff). WSR 18-16-059, § 182-550-7500, filed 7/26/18, effective 8/26/18. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-22-003, § 182-550-7500, filed 10/22/14, effective 11/22/14. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-14-049, § 182-550-7500, filed 6/25/14, effective 7/26/14. WSR 11-14-075, recodified as § 182-550-7500, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 2009-11 Omnibus Operating Budget (ESHB 1244). WSR 09-12-062, § 388-550-7500, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-13-100, § 388-550-7500, filed 6/20/07, effective 8/1/07; WSR 04-20-061, § 388-550-7500, filed 10/1/04, effective 11/1/04.]

AMENDATORY SECTION (Amending WSR 14-14-049, filed 6/25/14, effective 7/26/14)

**WAC 182-550-7550 OPSS payment enhancements.** (1) Pediatric adjustment.

(a) The medicaid agency establishes a policy adjustor to be applied to all enhanced ambulatory patient group (EAPG) services for clients under age ~~((eighteen))~~ 18 years.

(b) Effective July 1, 2014, this adjustor equals one point thirty-five (1.35).

(2) Chemotherapy and combined chemotherapy/pharmacotherapy adjustment.

(a) The agency establishes a policy adjustor to be applied to services grouped as chemotherapy drugs or combined chemotherapy and pharmacotherapy drugs.

(b) Effective July 1, 2014, this adjustor equals one point one (1.1).

(3) Sole community hospitals ~~((SCH))~~.

~~(a) ((To qualify as an SCH, a hospital must meet all of the following criteria. The hospital must))~~ For sole community hospital's rate enhancements, the agency multiplies the in-state hospital's specific EAPG conversion factor by a multiplier if the hospital meets all of the following criteria per RCW 74.09.5225:

~~(i) Be certified ((as an SCH by the Centers for Medicare and Medicaid Services (CMS))~~ by CMS as a sole community hospital as of January 1, 2013;

~~(ii) Have a level III adult trauma service designation ((by))~~ from the Washington state department of health (DOH) as of January 1, 2014;

~~(iii) Have less than ((one hundred fifty acute care licensed))~~ 150 acute care licensed beds in ((state)) fiscal year 2011; and

~~(iv) Be owned and operated by the state or ((one of its))~~ a political subdivisions.

~~(b) ((Effective January 1, 2015, the agency will apply an adjustor of one point twenty five (1.25) to the EAPG conversion factor for any hospital that meets the conditions in (a) of this subsection.))~~ As of July 1, 2021, an additional increase may be applied for hospitals that accept single bed certifications per RCW 71.05.745.

<b>Enhancement Multiplier by Year</b>				
<b>Provider Category</b>	<b>Effective For the Dates</b>			
	<u>07/01/2015 - 06/30/2020</u>	<u>07/01/2020 - 06/30/2021</u>	<u>07/01/2021 - 06/30/2022</u>	<u>07/01/2022 - 06/30/2023</u>
<u>Sole community hospital</u>	<u>1.25</u>	<u>1.5</u>	<u>N/A</u>	<u>1.25</u>
<u>Sole community hospital accepting single bed certifications</u>	<u>N/A</u>	<u>N/A</u>	<u>1.5</u>	<u>1.5</u>

[Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-14-049, § 182-550-7550, filed 6/25/14, effective 7/26/14.]

## WSR 22-22-068

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 31, 2022, 9:53 a.m.]

Supplemental Notice to WSR 22-19-092.

Preproposal statement of inquiry was filed as WSR [21-15-065].

Title of Rule and Other Identifying Information: New WAC

182-501-0300 Telemedicine and store and forward technology and 182-538-195 Telemedicine and store and forward technology; amending WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative, 182-551-2010 Definitions, 182-551-2040 Face-to-face encounter requirements, 182-551-2210 Provider requirements, 182-551-2125 Home health services delivered using telemedicine and 182-537-0200 Definitions; and repealing WAC 182-531-1730 Telemedicine.

Hearing Location(s): On December 6, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_ap92iSBET3y1jnHyL4hUig](https://us02web.zoom.us/webinar/register/WN_ap92iSBET3y1jnHyL4hUig). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than December 7, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by December 6, 2022.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-1349, telecommunications relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by November 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is refiling this CR-102 and scheduling a second public hearing. These proposed rules were previously filed as WSR 22-19-092, on September 21, 2022. A public hearing was scheduled for October 25, 2022, but the agency lost internet connection just as the public hearing was to begin and was unable to hold the hearing. Interested stakeholders who had registered for the public hearing were notified by email that the public hearing would be rescheduled for a later date. The agency is retaining the written comments from stakeholders that were already submitted under WSR 22-19-092. These comments do not need to be resubmitted.

The agency is developing and revising rules to provide for telemedicine and store and forward technology, in alignment with ESHB 1196. New WAC 182-501-0300 would replace WAC 182-531-1730 and provide more details regarding the authorized use of telemedicine and store and forward technology, including allowing for audio-only telemedicine. WAC 182-501-0300 also sets out the agency's requirements for telemedicine and store and forward technology.

Although the agency planned to amend WAC 182-531A-1200 as part of this rule making, this revision will be done as part of a separate rule making, filed under WSR 22-19-087.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1196.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Josh Morse, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-0839.

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

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

October 31, 2022

Wendy Barcus

Rules Coordinator

## OTS-3973.2

### NEW SECTION

#### **WAC 182-501-0300 Telemedicine and store and forward technology.**

##### **(1) Purpose and scope.**

(a) This section identifies the requirements and limitations for coverage, authorization, and payment of health care services provided through telemedicine or store and forward technologies as defined in subsection (2) of this section.

(b) This section applies to health care services, including behavioral health services, provided to clients enrolled in:

(i) An agency-contracted managed care organization (MCO) and fee-for-service programs; and

(ii) Other agency-contracted programs, including grant-funded health care services and health care services administered by behavioral health administrative services organizations (BH-ASOs).

(2) **Definitions.** The following definitions and those found in RCW 71.24.335, 74.09.325, and chapter 182-500 WAC apply to this section.

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the client at the originating site and the provider, for the purposes of diagnosis, consultation, or treatment.

(b) "Distant site" means the same as in RCW 71.24.335 or 74.09.325.

- (c) "Established relationship" means the same as in RCW 71.24.335 or 74.09.325.
- (d) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW.
- (e) "In person" means the client and the provider are in the same location.
- (f) "Originating site" means the same as in RCW 71.24.335 or 74.09.325.
- (g) "Store and forward technology" see RCW 71.24.335 or 74.09.325.
- (h) "Telemedicine" means the delivery of health care services using interactive audio and video technology, permitting real-time communication between the client at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. Telemedicine includes audio-only telemedicine, but does not include the following services:
- (i) Email and facsimile transmissions;
  - (ii) Installation or maintenance of any telecommunication devices or systems;
  - (iii) Purchase, rental, or repair of telemedicine equipment; and
  - (iv) Incidental services or communications that are not billed separately, such as communicating laboratory results.
- (3) **Requirements and authorized use of telemedicine and store and forward technology.**
- (a) **Governing authority.** The medicaid agency determines the health care services that may be paid for when provided through telemedicine or store and forward technology as authorized by state law, including RCW 71.24.335, 74.09.325, and 74.09.327.
- (b) **Coverage, authorization, and payment.** Health care services approved for delivery through telemedicine or store and forward technology must comply with the agency's program rules. The program rules include coverage, authorization, and payment by the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization).
- (c) **Billing requirements.** Providers must bill for health care services as required by the program rules and provider guides of the agency or the agency's designee, including a contracted managed care entity.
- (d) **Criteria for health care services.**
- (i) The agency determines the health care services that may be provided through telemedicine or store and forward technology based on whether the health care service is:
    - (A) A covered service when provided in person by the provider;
    - (B) Medically necessary;
    - (C) Determined to be safely and effectively provided through telemedicine or store and forward technology based on generally accepted health care practices and standards; and
    - (D) Provided through a technology that meets the standards required by state and federal laws governing the privacy and security of protected health information.
  - (ii) For health care services provided by audio-only telemedicine, the provider and client must have an established relationship.
  - (iii) For behavioral health services authorized for delivery through store and forward technology, there must be an associated visit between the referring provider and the client.

**(4) Health care services authorized for telemedicine and store and forward technology.**

(a) Health care services that are authorized to be provided through telemedicine or store and forward technology are identified in the agency's provider guides and fee schedules.

(b) For covered health care services approved for delivery through telemedicine or store and forward technology, the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization (MCO) or behavioral health administrative services organization (BH-ASO)), may require:

(i) Utilization review;

(ii) Prior authorization; and

(iii) Deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable in-person health care service.

**(5) Payment of health care services delivered through telemedicine or store and forward technology.**

(a) The agency's designee, including an agency-contracted managed care entity (managed care organization (MCO) or behavioral health administrative services organization (BH-ASO)), pays providers for health care services delivered through telemedicine or store and forward technology in the same amount as when the health care services are provided in person, except as provided in these rules, RCW 71.24.335, and 74.09.325.

(b) The agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization) pays for encounter-eligible health care services authorized for delivery through telemedicine at the encounter rate when provided by:

(i) Rural health clinics;

(ii) Federally qualified health centers; or

(iii) Direct Indian health service clinics, tribal clinics, or tribal federally qualified health centers.

**(6) Client consent.**

(a) To receive payment for an audio-only telemedicine service, a provider must obtain client consent before delivering the service to the client.

(b) The client's consent to receive services must:

(i) Acknowledge the provider will bill the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization) for the service; and

(ii) Be documented in the client's medical record.

(c) A provider may only bill a client for services if they comply with the requirements in WAC 182-502-0160.

**(7) Originating site and distant site.**

(a) Originating sites and distant sites must be located within the 50 United States, the District of Columbia, or United States territories.

(b) Originating sites may be paid facility fee for infrastructure and client preparation except as noted in (c) of this subsection.

(c) Originating sites facility fees are not paid when the:

(i) Service is provided by audio-only telemedicine;

(ii) Service is store and forward;

(iii) Originating site is:

(A) The client's home;

(B) A hospital, for inpatient services;

(C) A hospital or a hospital provider-based clinic that is an originating site for audio-only telemedicine;

(D) A skilled nursing facility;

(E) Any other location receiving payment for the client's room and board;

(F) Unable to qualify as a provider as defined in WAC 182-500-0085; or

(G) A provider employed by or affiliated with the same entity as the distant site.

(d) A facility fee payment may be subject to a negotiated agreement between the originating site and the managed care organization or the behavioral health administrative services organization.

(e) A distant site may not charge or be paid a facility fee for infrastructure and client preparation.

(8) **Recordkeeping.**

(a) Providers who furnish a health care service through telemedicine or store and forward technology must comply with the recordkeeping requirements in WAC 182-502-0020.

(b) Providers using telemedicine or store and forward technology must document in the client's medical record the:

(i) Technology used to deliver the health care service by telemedicine or store and forward technology (audio, visual, or other means) and any assistive technologies used;

(ii) Client's location for telemedicine only. This information is not required when a provider uses store and forward technology;

(iii) People attending the appointment with the client (e.g., family, friends, or caregivers) during the delivery of the health care service;

(iv) Provider's location;

(v) Names and credentials (MD, ARNP, RN, PA, CNA, LMHP, etc.) of all originating and distant site providers involved in the delivery of the health care service;

(vi) Start and end time or duration of service when billing is based on time;

(vii) Client's consent for the telemedicine technology used to deliver the health care service. In extenuating circumstances when consent cannot be obtained, the provider must document the reason.

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**OTS-3974.1**

AMENDATORY SECTION (Amending WSR 19-22-017, filed 10/25/19, effective 11/25/19)

**WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative.** (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's Washington apple health program. Refer to WAC 182-501-0060 and 182-501-0065; and

(b) Medically necessary as defined in WAC 182-500-0070.

(2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC 182-501-0165.

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

- (a) Alcohol and substance misuse counseling (refer to WAC 182-531-1710);
- (b) Allergen immunotherapy services;
- (c) Anesthesia services;
- (d) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);
- (e) Emergency physician services;
- (f) ENT (ear, nose, and throat) related services;
- (g) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);
- (h) Habilitative services (refer to WAC 182-545-400);
- (i) Reproductive health services (refer to chapter 182-532 WAC);
- (j) Hospital inpatient services (refer to chapter 182-550 WAC);
- (k) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);
- (l) Office visits;
- (m) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients (~~(twenty)~~) 20 years of age and younger);
- (n) Osteopathic treatment services;
- (o) Pathology and laboratory services;
- (p) Psychiatry and other rehabilitation services (refer to chapter 182-550 WAC);
- (q) Foot care and podiatry services (refer to WAC 182-531-1300);
- (r) Primary care services;
- (s) Psychiatric services;
- (t) Psychotherapy services (refer to WAC 182-531-1400);
- (u) Pulmonary and respiratory services;
- (v) Radiology services;
- (w) Surgical services;
- (x) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects (e.g., congenital or as a result of illness or physical trauma), or for mastectomy reconstruction for post cancer treatment;
- (y) Telemedicine (refer to WAC (~~(182-531-1730)~~) 182-501-0300);
- (z) Tobacco/nicotine cessation counseling (refer to WAC 182-531-1720);
- (aa) Vaccines for adults, adolescents, and children in the United States administered according to the current advisory committee on immunization practices (ACIP) recommended immunization schedule published by the Centers for Disease Control and Prevention (CDC). Vaccines outside the regular schedule may be covered if determined to be medically necessary;
- (bb) Other outpatient physician services.

(5) The agency covers physical examinations for Washington apple health clients only when the physical examination is for one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for Washington apple health, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and provider notices.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-22-017, § 182-531-0100, filed 10/25/19, effective 11/25/19; WSR 18-21-058, § 182-531-0100, filed 10/9/18, effective 11/9/18; WSR 15-03-041, § 182-531-0100, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 41.05.021. WSR 13-18-035, § 182-531-0100, filed 8/28/13, effective 9/28/13. Statutory Authority: RCW 41.05.021 and 42 C.F.R. 455.410. WSR 13-04-095, § 182-531-0100, filed 2/6/13, effective 3/9/13. Statutory Authority: RCW 41.05.021 and section 1927 of the Social Security Act. WSR 12-18-062, § 182-531-0100, filed 8/31/12, effective 10/1/12. WSR 11-14-075, recodified as § 182-531-0100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 11-14-055, § 388-531-0100, filed 6/29/11, effective 7/30/11. Statutory Authority: RCW 74.09.521. WSR 08-12-030, § 388-531-0100, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-531-0100, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-0100, filed 12/6/00, effective 1/6/01.]

## OTS-3984.1

AMENDATORY SECTION (Amending WSR 20-14-062, filed 6/26/20, effective 7/27/20)

**WAC 182-537-0200 Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this chapter:

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

**"Assessment"** - For the purposes of this chapter, an assessment is made-up of medically necessary tests given to an individual child by a licensed health care provider to evaluate whether a child with a disability is in need of early intervention services or special education and related services. Assessments are a part of the individualized education program (IEP) and individualized family service plan (IFSP) evaluation and reevaluation processes.

**"Charter school"** - A public school governed by a charter school board and operated according to the terms of the charter school contract. Charter schools are open to all students, do not charge tuition, and do not have special entrance requirements.

**"Child with a disability"** - For purposes of this chapter, a child with a disability is a child evaluated and determined to need early intervention services or special education and related services because of a disability in one or more of the following eligibility categories:

- Autism;
- Deaf-blindness;
- Developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services;
- Hearing loss (including deafness);
- Intellectual disability;
- Multiple disabilities;
- Orthopedic impairment;
- Other health impairment;
- Serious emotional disturbance (emotional behavioral disturbance);
- Specific learning disability;
- Speech or language impairment;
- Traumatic brain injury; and
- Visual impairment (including blindness).

**"Core provider agreement"** - See WAC 182-500-0020.

**"Early intervention services"** - Means developmental services provided to children ages birth through two. For the purposes of this chapter, early intervention services include:

- Audiology services;
- Health services;
- Nursing services;
- Occupational therapy;
- Physical therapy;
- Psychological services; and
- Speech-language pathology.

**"Educational service district"** - A regional agency which provides cooperative and informal services to local school districts within defined regions of the state.

**"Electronic signature"** - See WAC 182-500-0030.

**"Evaluation"** - Procedures used to determine whether a child has a disability, and the nature and extent of the early intervention or special education and related services needed. (See WAC 392-172A-01070 and 34 C.F.R. Sec. 303.321.)

**"Fee-for-service"** - See WAC 182-500-0035.

**"Handwritten signature"** - A scripted name or legal mark of an individual on a document to signify knowledge, approval, acceptance, or responsibility of the document.

**"Health care-related services"** - For the purposes of this chapter, means developmental, corrective, and other supportive services required to assist a student ages three through twenty eligible for special education and include:

- Audiology;
- Counseling;
- School health services and school nurse services;
- Occupational therapy;
- Physical therapy;
- Psychological assessments and services; and
- Speech-language therapy.

**"Individualized education program (IEP)"** - A written educational program for a child who is age three through twenty-one and eligible for special education. An IEP is developed, reviewed and revised according to WAC 392-172A-03090 through 392-172A-03115.

**"Individualized family service plan (IFSP)"** - A plan for providing early intervention services to a child birth through age two, with a disability or developmental delay and the child's family. The IFSP:

- Is based on the evaluation and assessment described in 34 C.F.R. Sec. 303.321;
- Includes the content specified in 34 C.F.R. Sec. 303.344; and
- Is developed under the IFSP procedures in 34 C.F.R. Secs. 303.342, 303.343, and 303.345.

**"Medically necessary"** - See WAC 182-500-0070.

**"National provider identifier (NPI)"** - See WAC 182-500-0075.

**"Reevaluation"** - Procedures used to determine whether a child continues to need early intervention services or special education and related services. (See WAC 392-172A-03015 and 34 C.F.R. Secs. 303.342 and 303.343.)

**"Related services"** - See WAC 392-172A-01155.

**"School-based health care services contract"** - A contract that describes and defines the relationship between the agency, the school-based health care services program, and the school district, ESD, charter, or tribal school.

**"School-based health care services program" or "SBHS"** - Is an agency-administered program that pays contracted school districts, educational service districts (ESDs), charter schools, and tribal schools for providing early intervention services or special education health-related services to children ages birth through twenty who have an IEP or IFSP.

**"School district"** - A group of schools administered by a particular authority within defined geographical division.

**"Signature log"** - A typed list that verifies a licensed provider's identity by associating each provider's signature with their name, handwritten initials, credentials, license and national provider identifier (NPI).

**"Special education"** - See WAC 392-172A-01175.

**"Supervision"** - Means supervision provided by a licensed health care provider either directly or indirectly to assist the supervisee in the administration of early intervention or health care-related services outlined in the IEP or IFSP.

**"Telemedicine"** - See WAC (~~182-531-1730~~) 182-501-0300.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-14-062, § 182-537-0200, filed 6/26/20, effective 7/27/20; WSR 19-04-095, § 182-537-0200, filed 2/5/19, effective 3/8/19; WSR 16-07-141, § 182-537-0200, filed 3/23/16, effective 4/23/16. Statutory Authority: RCW 41.05.021, 34 C.F.R. 300.154(d), and chapter 182-502 WAC. WSR 13-21-079, § 182-537-0200, filed 10/17/13, effective 11/17/13. Statutory Authority: RCW 41.05.021. WSR 13-05-017, § 182-537-0200, filed 2/7/13, effective 3/10/13. WSR 11-14-075, recodified as § 182-537-0200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, and 42 C.F.R. 440.110. WSR 09-07-004, § 388-537-0200, filed 3/4/09, effective 4/4/09.]

## OTS-3976.1

### NEW SECTION

#### **WAC 182-538-195 Telemedicine and store and forward technology.**

The medicaid agency's rules related to the authorized use of telemedi-

cine and store and forward technology are found in WAC 182-501-0300 and are applicable to the benefits (including behavioral health services) administered by agency-contracted managed care entities (managed care organizations and behavioral health administrative service organizations) and fee-for-service programs.

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### OTS-3977.1

AMENDATORY SECTION (Amending WSR 22-05-048, filed 2/9/22, effective 3/12/22)

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

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

**"Authorized practitioner"** means:

- (a) A physician, nurse practitioner, clinical nurse specialist, or physician assistant who may order and conduct home health services, including face-to-face encounter services; or
- (b) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare who may conduct home health services, including face-to-face encounter services.

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

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

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

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

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

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

**"Home health aide"** means a person registered or certified as a nursing assistant under chapter 18.88 RCW who, under the direction and

supervision of a registered nurse or licensed therapist, assists in the delivery of nursing or therapy related activities, or both.

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

**"Home health skilled services"** means skilled health care (nursing, specialized therapy, and home health aide) services provided on an intermittent or part-time basis by a medicare-certified home health agency with a current provider number in any setting where the client's normal life activities take place. See also WAC 182-551-2000.

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

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

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

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

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

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

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

(See WAC 182-551-2110.)

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

~~(a) The collection and transmission of clinical data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may~~

~~be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry; or~~

~~(b) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit)) See WAC 182-501-0300.~~

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-05-048, § 182-551-2010, filed 2/9/22, effective 3/12/22; WSR 21-23-044, § 182-551-2010, filed 11/9/21, effective 12/10/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2010, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-03-035, § 182-551-2010, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2010, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2010, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2010, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2010, filed 8/2/99, effective 9/2/99.]

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

**WAC 182-551-2125 Home health services delivered ((through)) using telemedicine.** (1) The medicaid agency covers the delivery of home health services through telemedicine for clients who have been diagnosed with an unstable condition who may be at risk for hospitalization or a more costly level of care. The client must have a diagnosis or diagnoses where there is a high risk of sudden change in clinical status which could compromise health outcomes.

(2) The medicaid agency pays for one telemedicine interaction, per eligible client, per day, based on the ordering physician's home health plan of care.

(3) To receive payment for the delivery of home health services through telemedicine, the services must involve:

(a) An assessment, problem identification, and evaluation which includes:

(i) Assessment and monitoring of clinical data including, but not limited to, vital signs, pain levels and other biometric measures specified in the plan of care. Also includes assessment of response to previous changes in the plan of care; and

(ii) Detection of condition changes based on the telemedicine encounter that may indicate the need for a change in the plan of care; and

(b) Implementation of a management plan through one or more of the following:

(i) Teaching regarding medication management, as appropriate ~~((based on the telemedicine findings for that encounter));~~

(ii) Teaching regarding other interventions as appropriate to both the patient and the caregiver;

(iii) Management and evaluation of the plan of care including changes in visit frequency or addition of other skilled services;

(iv) Coordination of care with the ordering physician regarding ~~((telemedicine))~~ findings;

(v) Coordination and referral to other medical providers as needed; and

(vi) Referral to the emergency room as needed.

(4) The medicaid agency does not require prior authorization for the delivery of home health services through telemedicine.

(5) The medicaid agency does not pay for the purchase, rental, or repair of telemedicine equipment.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2125, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-03-035, § 182-551-2125, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2125, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2125, filed 5/3/10, effective 6/3/10.]

### OTS-3982.1

AMENDATORY SECTION (Amending WSR 21-12-051, filed 5/26/21, effective 6/26/21)

**WAC 182-551-2040 Face-to-face encounter requirements.** (1) The face-to-face encounter requirements of this section may be met using telemedicine (~~or telehealth~~) services. See WAC 182-551-2125.

(2) The medicaid agency pays for home health services provided under this chapter only when the face-to-face encounter requirements in this section are met.

(3) For initiation of home health services, with the exception of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires home health services and must occur within (~~ninety~~) 90 days before or within the (~~thirty~~) 30 days after the start of the services.

(4) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no more than six months before the start of services.

(5) The face-to-face encounter may be conducted by:

- (a) A physician;
- (b) A nurse practitioner;
- (c) A clinical nurse specialist;

(d) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare;

(e) A physician assistant; or

(f) The attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

(6) Services may be ordered by:

- (a) Physicians;
- (b) Nurse practitioners;
- (c) Clinical nurse specialists; or
- (d) Physician assistants.

(7) For all home health services except medical equipment under WAC 182-551-2122, the physician, nurse practitioner, clinical nurse specialist, or physician assistant responsible for ordering the services must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection (3) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

(8) For medical equipment under WAC 182-551-2122, except as provided in (b) of this subsection, an ordering physician, nurse practitioner, clinical nurse specialist, physician assistant, or the attending physician when a client is discharged from an acute hospital stay, must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection (4) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. § 440.70. WSR 21-12-051, § 182-551-2040, filed 5/26/21, effective 6/26/21; WSR 18-24-023, § 182-551-2040, filed 11/27/18, effective 1/1/19.]

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

**WAC 182-551-2210 Provider requirements.** For any delivered home health service to be payable, the medicaid agency requires home health providers to develop and implement an individualized plan of care (POC) for the client.

(1) The POC must:

(a) Be documented in writing and be located in the client's home health medical record;

(b) Be developed, supervised, and signed by a licensed registered nurse or licensed therapist;

(c) Reflect the authorized practitioner's orders and client's current health status;

(d) Contain specific goals and treatment plans;

(e) Be reviewed and revised by an authorized practitioner at least every 60 calendar days, signed by the authorized practitioner within 45 days of the verbal order, and returned to the home health agency's file; and

(f) Be available to medicaid agency staff or its designated contractor(s) on request.

(2) The provider must include all the following in the POC:

(a) The client's name, date of birth, and address (to include name of residential care facility, if applicable);

(b) The primary diagnosis (the diagnosis that is most related to the reason the client qualifies for home health services) or the diagnosis that is the reason for the visit frequency;

(c) All secondary medical diagnoses, including date or dates of onset or exacerbation;

- (d) The prognosis;
- (e) The type or types of equipment required(~~(, including telemedicine as appropriate)~~);
- (f) A description of each planned service and goals related to the services provided;
- (g) Specific procedures and modalities;
- (h) A description of the client's mental status;
- (i) A description of the client's rehabilitation potential;
- (j) A list of permitted activities;
- (k) A list of safety measures taken on behalf of the client; and
- (l) A list of medications which indicates:
  - (i) Any new prescription; and
  - (ii) Which medications are changed for dosage or route of administration.
- (3) The provider must include in or attach to the POC:
  - (a) A description of the client's functional limits and the effects;
    - (b) Documentation that justifies why the medical services should be provided in any setting where the client's life activities take place instead of an authorized practitioner's office, clinic, or other outpatient setting;
    - (c) Significant clinical findings;
    - (d) Dates of recent hospitalization;
    - (e) Notification to the department of social and health services (DSHS) case manager of admittance;
    - (f) A discharge plan, including notification to the DSHS case manager of the planned discharge date and client disposition at time of discharge; and
    - (g) Order for the delivery of home health services through telemedicine or telemonitoring, as appropriate.
  - (4) The individual client medical record must comply with community standards of practice, and must include documentation of:
    - (a) Visit notes for every billed visit;
    - (b) Supervisory visits for home health aide services as described in WAC 182-551-2120(3);
    - (c) All medications administered and treatments provided;
    - (d) All authorized practitioner's orders, new orders, and change orders, with notation that the order was received before treatment;
    - (e) Signed authorized practitioner's new orders and change orders;
    - (f) Home health aide services as indicated by a registered nurse or licensed therapist in a home health aide care plan;
    - (g) Interdisciplinary and multidisciplinary team communications;
    - (h) Inter-agency and intra-agency referrals;
    - (i) Medical tests and results;
    - (j) Pertinent medical history; and
    - (k) Notations and charting with signature and title of writer.
  - (5) The provider must document at least the following in the client's medical record:
    - (a) Skilled interventions per the POC;
    - (b) Client response to the POC;
    - (c) Any clinical change in client status;
    - (d) Follow-up interventions specific to a change in status with significant clinical findings;
    - (e) Any communications with the attending authorized practitioner; and
    - (f) Telemedicine findings, as appropriate.

(6) The provider must include the following documentation in the client's visit notes when appropriate:

(a) Any teaching, assessment, management, evaluation, client compliance, and client response;

(b) Weekly documentation of wound care, size (dimensions), drainage, color, odor, and identification of potential complications and interventions provided;

(c) If a client's wound is not healing, the client's authorized practitioner has been notified, the client's wound management program has been appropriately altered and, if possible, the client has been referred to a wound care specialist; and

(d) The client's physical system assessment as identified in the POC.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-23-044, § 182-551-2210, filed 11/9/21, effective 12/10/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2210, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-03-035, § 182-551-2210, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2210, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2210, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2210, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2210, filed 8/2/99, effective 9/2/99.]

### **OTS-3983.1**

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-531-1730 Telemedicine.

**WSR 22-22-071**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 31, 2022, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-114.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-400-0060 Who is eligible for aged, blind, or disabled (ABD) cash assistance?, 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?, 388-434-0005 How often does the department review my eligibility for benefits?, 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?, 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?, 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?, 388-452-0005 Do I have to be interviewed in order to get cash and basic food benefits?, 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance, and 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?

Hearing Location(s): On December 6, 2022, 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 December 7, 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 December 6, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov), by November 22, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments are necessary to implement ABD eligibility changes funded within the supplemental operating budget (chapter 297, Laws of 2022). Effective September 1, 2022, individuals aged 21-64 residing in a public mental institution are potentially eligible for the ABD program if they meet all other eligibility criteria.

Emergency amendments to implement this change took effect September 1, 2022, under WSR 22-18-066.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, and 74.62.030.

Statute Being Implemented: 2021-2023 Supplemental operating budget (section 205(22), 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: Evelyn Acopan, P.O. Box 45470, Olympia, WA 98504-5470, 253-778-2381.

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, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

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

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

October 28, 2022  
Katherine I. Vasquez  
Rules Coordinator

#### SHS-4941.4

AMENDATORY SECTION (Amending WSR 22-17-080, filed 8/17/22, effective 9/16/22 [9/17/22])

**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, as defined in WAC 182-500-0050, 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(~~(or)~~

~~(i) A) a patient in a public (~~(medical)~~) institution(~~(or)~~).~~

~~((ii) A patient in a public mental institution and:~~

~~(A) 65 years of age or older; or~~

~~(B) 20 years of age or younger.~~

~~(5))~~ (b) You aren't eligible for ABD (~~(when)~~) if you are in the custody of or confined in a public (~~(institution)~~) correctional facility such as a state (~~(penitentiary)~~) prison, or city, county, or tribal 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.]

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**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 20-19-006, filed 9/3/20, effective 10/4/20)

**WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?** (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

- (a) Apply for cash assistance as detailed in WAC 388-406-0010;
  - (b) Complete an interview with the department;
  - (c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;
  - (d) Are at least (~~eighteen~~) 18 years old or, if under (~~eighteen~~) 18, legally emancipated or a member of a married couple;
  - (e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;
  - (f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;
  - (g) Meet the citizenship and alien status requirements for ABD cash assistance under WAC 388-424-0015;
  - (h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;
  - (i) Meet the residency requirement for cash assistance under WAC 388-468-0005;
  - (j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.
  - (k) To remain eligible for HEN referral, you must also:
    - (i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and
    - (ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.
- (2) You are not eligible for referral to the HEN program if you:
- (a) Are eligible for temporary assistance for needy families (TANF) program;
  - (b) Refuse or fail to meet a TANF rule without good cause;
  - (c) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;
  - (d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;
  - (e) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;
  - (f) Are an ineligible spouse of an SSI recipient;
  - (g) Refuse or fail to follow a Social Security Administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;

(h) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060;

(i) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 388-442-0010; or

(j) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.

(3) If you reside in a public institution, as defined in WAC 182-500-0050, and meet all other requirements, your eligibility for referral to the HEN program 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 referral to the HEN program if you are ~~((+))~~ a patient in a public institution.

~~((i) A patient in a public medical institution; or~~

~~(ii) A patient in a public mental institution and are sixty-five years of age or older.))~~

(b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public ~~((institution))~~ correc-tional facility such as a state ~~((penitentiary))~~ prison, or city, county, or tribal 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, § 388-400-0070, 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, § 388-400-0070, 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, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-400-0070, filed 11/26/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 21-07-082, filed 3/17/21, effective 4/17/21)

**WAC 388-434-0005 How often does the department review my eligibility for benefits?** (1) If you receive cash assistance, the department reviews your eligibility for assistance at least once every ~~((twelve))~~ 12 months.

(2) If you receive ABD cash assistance and reside in a public institution, as defined in WAC 182-500-0050, the department reviews your eligibility at least once every 24 months.

~~((+2))~~ (3) When it is time for your eligibility review, the department requires you to complete a review. We use the information you provide to determine your eligibility for all assistance programs.

~~((+3))~~ (4) If you complete an interview for assistance with a department representative and sign the printed interactive interview declaration (IID) form, you do not have to complete a separate review form.

~~((4))~~ (5) For cash assistance, an eligibility review form or the IID must be dated and signed by both spouses, or both parents of a child in common when the parents live together.

~~((5))~~ (6) We may review your eligibility at any time if we decide your circumstances need to be reviewed sooner.

~~((6))~~ (7) At your review, we look at:

(a) All eligibility requirements under WAC 388-400-0005 through 388-400-0030;

(b) Changes since we last determined your eligibility; and

(c) Changes that are anticipated for the next review period.

~~((7))~~ (8) You are responsible for attending an interview if one is required under WAC 388-452-0005.

~~((8))~~ (9) If you do not complete the eligibility review for cash assistance, we consider you to be withdrawing your request for continuing assistance and your cash assistance benefits will end.

~~((9))~~ (10) We will send you written notice as described under chapter 388-458 WAC before assistance is suspended, terminated, or a benefit error is established as a result of your eligibility review.

~~((10))~~ (11) When you need a supplemental accommodation under WAC 388-472-0010, we will help you meet the requirements of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.510. WSR 21-07-082, § 388-434-0005, filed 3/17/21, effective 4/17/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-434-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-19-134, § 388-434-0005, filed 9/21/04, effective 10/1/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-434-0005, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-23-083, § 388-434-0005, filed 11/16/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-434-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-522-2230.]

AMENDATORY SECTION (Amending WSR 22-07-020, filed 3/8/22, effective 4/8/22)

**WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?** (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than ~~((twelve))~~ 12 months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to a substance use disorder.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;  
 (c) You obtain work skills by completing a training program; or  
 (d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for services through the developmental disabilities administration (DDA) for a medical condition that is expected to last (~~(twelve)~~) 12 months or more or result in death;

(e) You are eligible for long-term care services from the aging and long-term support administration for a medical condition that is expected to last (~~(twelve)~~) 12 months or more or result in death;  
 (~~(e)~~)

(f) You have been civilly committed to eastern or western state hospital;

(g) You have been placed in eastern or western state hospital for an offense you have been found not guilty by reason of insanity; or

~~((f))~~ (h) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by a substance use disorder and do not meet the other disability criteria in subsections (2) (a) (~~(through)~~) - (d) (~~(above)~~) of this section, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of a substance use disorder.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last (~~(twelve)~~) 12 months unless:

(a) You file a timely appeal with SSA;

(b) SSA decides you have good cause for a late appeal; or

(c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.035, 74.09.530, 74.62.030, and 41.05.021. WSR 22-07-020, § 388-449-0001, filed 3/8/22, effective 4/8/22. Statutory Authority: 2014 c 218, 2011 1st sp.s. c 15, 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, 41.05.021, 74.09.035, and 74.09.530. WSR 15-03-031, § 388-449-0001, filed 1/12/15, effective 2/12/15. 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, § 388-449-0001, 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, § 388-449-0001, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?** (1) The maximum period of eligibility for ABD cash is (~~twenty-four~~) 24 months before we must review additional medical evidence. If you remain on ABD cash at the end of the (~~twenty-four~~) 24 month period, we determine your eligibility using current medical evidence.

(2) If your application for SSI is denied:

(a) We review your eligibility for the ABD cash program;

(b) We stop your benefits if you do not provide proof you have filed an appeal with SSA within (~~sixty~~) 60 days of a SSI denial for not being disabled.

(3) We stop your benefits after the final decision on your application for SSI/SSA benefits or if you fail to follow through with any part of the SSI/SSA application or appeals process.

(4) We review your eligibility for the ABD cash program when you discharge from a public institution, as defined in WAC 182-500-0050.

[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, § 388-449-0150, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 22-07-020, filed 3/8/22, effective 4/8/22)

**WAC 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?** (1) You may receive ABD benefits while you are waiting to receive supplemental security income (SSI) benefits only when you:

(a) Have filed your SSI application with the Social Security Administration (SSA), follow through with SSA directions and requirements to process your application including keeping all interview and consultative examination appointments, and do not withdraw your application;

(b) Agree to assign the initial or reinstated SSI payment to us provided under WAC 388-449-0210;

(c) Are otherwise eligible according to WAC 388-400-0060; and

(d) Meet disability criteria listed in WAC 388-449-0001.

(2) To demonstrate your impairments are disabling despite medical treatment, you must participate in medical treatment for the impairments that keep you from working, unless you have a good cause. Good cause includes, but is not limited to, the following reasons:

(a) The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk;

(b) Treatment is not available because you can't obtain it without cost to you;

(c) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits; or

(d) You practice an organized religion that prohibits the treatment.

(3) If you refuse or fail to participate in medical treatment without good cause, your benefits may end and you will remain ineligible until you reapply and provide proof you are pursuing treatment as recommended.

(4) ABD recipients who reside in a public institution as defined in WAC 182-500-0050, are not subject to the requirements of subsections (1)(a)-(b) of this section. The requirements to apply for and assign SSI benefits will be addressed after discharge once an ABD recipient no longer resides in a public institution.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.035, 74.09.530, 74.62.030, and 41.05.021. WSR 22-07-020, § 388-449-0200, filed 3/8/22, effective 4/8/22. 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, § 388-449-0200, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 20-14-090, filed 6/30/20, effective 8/1/20)

**WAC 388-452-0005 Do I have to be interviewed in order to get cash and basic food benefits?** (1) You or your authorized representative must have an interview with the department:

(a) At initial certification, unless you meet requirements in subsection (9) of this section; and

(b) At least once every (~~twelve~~) 12 months, unless you meet the requirements in subsections (8)(b) or (9) of this section.

(2) You will have just one interview even if you are applying for or are having a review for benefits from more than one program.

(3) We hold interviews either in person or over the phone.

(4) If we do not interview you on the same day that we receive your application, we will schedule an interview appointment for you or have you contact us by phone during our business hours to complete your interview.

(5) If we schedule an interview, we will set your appointment to allow you at least (~~ten~~) 10 days after the interview to provide needed verification:

(a) Before the end of the (~~thirty~~) 30-day processing period for applications; or

(b) Before your certification period ends for eligibility reviews or recertifications.

(6) If you miss your first interview and ask for another interview within (~~thirty~~) 30 days of the date you applied for benefits, we schedule a second interview or have you call us and complete the interview over the phone.

(7) If you must have an interview for benefits, you or someone who can give us the information we need about your AU must participate in the interview. You may ask any person you choose to help with your interview.

(8) For basic food only:

(a) Your authorized representative as described in WAC 388-460-0005 may take your place during your interview.

(b) We may waive the interview requirement at recertification if the household meets the elderly simplified application project (ESAP) criteria:

(i) All members of the household are elderly or disabled, as defined in WAC 388-400-0040;

(ii) No mandatory or applying household members have earned income;

(iii) The paper or electronic eligibility review is complete;

(iv) The household has provided all necessary verification or the verification is available through interfaces available to the department; and

(v) No information provided is unclear or incomplete requiring a request for verification.

(9) For ABD cash assistance, we waive the interview requirement at application and recertification if you reside in a public institution, as defined in WAC 182-500-0050.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 20-14-090, § 388-452-0005, filed 6/30/20, effective 8/1/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-006, § 388-452-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.120, 74.08A.903, and 7 C.F.R. 273.9. WSR 10-01-165, § 388-452-0005, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-10-102, § 388-452-0005, filed 5/4/04, effective 7/1/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 7 C.F.R. 273.2(e). WSR 03-18-113, § 388-452-0005, filed 9/2/03, effective 11/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 02-14-023, § 388-452-0005, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530. WSR 01-14-060, § 388-452-0005, filed 6/29/01, effective 8/1/01; WSR 00-22-087, § 388-452-0005, filed 10/31/00, effective 12/1/00. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090,

74.09.530 and 42 C.F.R. 435.907. WSR 99-11-075, § 388-452-0005, filed 5/18/99, effective 6/18/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-452-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0420.]

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

**WAC 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance.** Payment standards for assistance units (AU) in certain facilities and medical institutions are based on the need for clothing, personal maintenance, and necessary incidentals (CPI).

(1) The CPI (~~cash assistance~~) payment standard for recipients of cash assistance is:

(a) (~~Forty one dollars and 62 cents~~) \$41.62 for eligible persons in medical institutions as defined in WAC 182-500-0050; or

(b) (~~Thirty eight dollars and 84 cents~~) \$38.84 for eligible persons in one of the following facilities as defined in WAC 182-513-1100:

(i) Adult residential care (ARC) facility;

(ii) Adult residential rehabilitation centers (ARRC);

(iii) Adult residential treatment facility (ARTF);

(iv) Enhanced adult residential care facility (EARC); or

(v) Developmental disability administration (DDA) group home facilities.

(2) The CPI payment standard for recipients of ABD cash assistance who reside in a public institution as defined in WAC 182-500-0050, is \$41.62.

(~~(2)~~) (3) When a person's living situation is other than ((the medical institutions defined in WAC 182-500-0050 and group facilities defined in WAC 182-513-1100)) what is listed in subsections (1) or (2) of this section, refer to the following:

(a) WAC 388-478-0020 for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA);

(b) WAC 388-478-0027 for pregnant women assistance (PWA); or

(c) WAC 388-478-0033 for aged, blind, or disabled (ABD).

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0006, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.005, 74.04.770, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, and 74.62.030. WSR 15-12-021, § 388-478-0006, filed 5/22/15, effective 7/1/15.]

AMENDATORY SECTION (Amending WSR 22-16-082, filed 8/1/22, effective 9/1/22)

**WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?** (1) The maximum monthly payment

standards for aged, blind, or disabled (ABD) cash assistance program assistance units are:

Assistance Unit Size	Payment Standard
1	\$417
2	\$528

(2) ABD clothing, personal maintenance, and necessary incidentals (CPI) payment standards are listed in WAC 388-478-0006.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0033, filed 9/24/20, effective 10/25/20. 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, § 388-478-0033, filed 4/27/12, effective 6/1/12.]

## WSR 22-22-076

## PROPOSED RULES

## DEPARTMENT OF REVENUE

[Filed October 31, 2022, 4:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-043.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2022 and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): On December 13, 2022, at 10:00 a.m., internet/phone via Microsoft Teams. In-person option also available. Please contact Sierra Crumbaker at SierraC@dor.wa.gov for login/dial-in information. If you would like to attend in person, please RSVP by emailing SierraC@dor.wa.gov by November 22, 2022.

Date of Intended Adoption: December 20, 2022.

Submit Written Comments to: Nikki Bizzarri, P.O. Box 47453, Olympia, WA 98504-7453, email NikkiB@dor.wa.gov, fax 360-534-1606, by December 16, 2022.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384, by December 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes the stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply January 1 through June 30, 2023.

The forest land values are updated to reflect land values per acre for 2023.

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for January 1 through June 30, 2023, and the forest land values for 2023.

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

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Nikki Bizzarri, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1582; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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 Nikki Bizzarri, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1582, fax 360-534-1606.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

October 31, 2022  
 Atif Aziz  
 Rules Coordinator

**OTS-4170.2**

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

**WAC 458-40-540 Forest land values—((2022)) 2023.** The forest land values, per acre, for each grade of forest land for the ((2022)) 2023 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2022)) 2023 VALUES PER ACRE
1	1	((218)) <u>224</u>
	2	((216)) <u>222</u>
	3	((202)) <u>207</u>
	4	((148)) <u>152</u>
2	1	((186)) <u>191</u>
	2	((179)) <u>184</u>
	3	((172)) <u>176</u>
	4	((122)) <u>125</u>
3	1	((144)) <u>148</u>
	2	((140)) <u>144</u>
	3	((138)) <u>142</u>
	4	((106)) <u>109</u>
4	1	((112)) <u>115</u>
	2	((107)) <u>110</u>
	3	((106)) <u>109</u>
	4	((81)) <u>83</u>
5	1	((81)) <u>83</u>
	2	((71)) <u>73</u>
	3	((70)) <u>72</u>
	4	((50)) <u>51</u>
6	1	((41)) <u>42</u>
	2	((39)) <u>40</u>
	3	((39)) <u>40</u>
	4	((37)) <u>38</u>
7	1	18
	2	18
	3	17
	4	17
8	1	1

[Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 22-01-185, § 458-40-540, filed 12/20/21, effective 1/1/22; WSR 21-02-020, § 458-40-540, filed 12/28/20, effective 1/1/21. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 20-02-053, § 458-40-540, filed 12/23/19, effective 1/1/20; WSR 19-02-069, § 458-40-540, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 18-02-058, § 458-40-540, filed 12/29/17, effective 1/1/18; WSR 17-02-003, § 458-40-540, filed 12/22/16, effective 1/1/17; WSR 16-01-069, § 458-40-540, filed

12/14/15, effective 1/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 15-01-095, § 458-40-540, filed 12/17/14, effective 1/1/15. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. WSR 14-01-097, § 458-40-540, filed 12/17/13, effective 1/1/14; WSR 13-02-034, § 458-40-540, filed 12/21/12, effective 1/1/13. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091 and 84.33.140. WSR 12-02-040, § 458-40-540, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. WSR 11-02-019, § 458-40-540, filed 12/29/10, effective 1/1/11; WSR 10-02-031, § 458-40-540, filed 12/29/09, effective 1/1/10; WSR 09-02-044, § 458-40-540, filed 12/31/08, effective 1/1/09; WSR 08-02-063, § 458-40-540, filed 12/28/07, effective 1/1/08; WSR 07-02-038, § 458-40-540, filed 12/26/06, effective 1/1/07. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.140. WSR 06-02-006, § 458-40-540, filed 12/22/05, effective 1/1/06; WSR 05-02-037, § 458-40-540, filed 12/30/04, effective 1/1/05. Statutory Authority: RCW 82.32.300 and 84.33.140. WSR 04-02-018, § 458-40-540, filed 12/30/03, effective 1/1/04. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 03-02-004, § 458-40-540, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. WSR 02-02-033, § 458-40-540, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.120. WSR 01-02-018, § 458-40-540, filed 12/21/00, effective 1/1/01; WSR 00-02-018, § 458-40-540, filed 12/27/99, effective 1/1/00; WSR 99-02-030, § 458-40-540, filed 12/30/98, effective 1/1/99; WSR 98-02-014, § 458-40-540, filed 12/30/97, effective 1/1/98; WSR 97-07-041, § 458-40-540, filed 3/14/97, effective 4/14/97; WSR 96-02-055, § 458-40-540, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.300 and 84.33.120. WSR 95-02-039, § 458-40-540, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 82.32.300. WSR 94-02-046, § 458-40-540, filed 12/30/93, effective 1/1/94. Statutory Authority: RCW 84.33.120. WSR 93-02-024, § 458-40-540, filed 12/31/92, effective 1/1/93; WSR 91-24-026, § 458-40-540, filed 11/26/91, effective 1/1/92. Statutory Authority: RCW 84.33.120 and 84.08.010. WSR 90-24-012, § 458-40-540, filed 11/27/90, effective 12/28/90; WSR 89-23-095, § 458-40-540, filed 11/21/89, effective 12/22/89. Statutory Authority: RCW 84.33.120 and 84.33.130. WSR 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; WSR 87-22-068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. WSR 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

AMENDATORY SECTION (Amending WSR 22-14-029, filed 6/24/22, effective 7/1/22)

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

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((July 1 through December 31, 2022))~~ January 1 through June 30, 2023:

Washington State Department of Revenue

WESTERN WASHINGTON STUMPAGE VALUE TABLE

((July 1 through December 31, 2022))

January 1 through June 30, 2023

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

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	1	<del>\$(509)</del> <u>547</u>
		2	<del>((611))</del> <u>591</u>
		3	<del>((658))</del> <u>597</u>
		4	<del>((640))</del> <u>627</u>
		5	<del>((559))</del> <u>561</u>
		9	<del>((495))</del> <u>533</u>
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	1	<del>((342))</del> <u>345</u>
		2	<del>((448))</del> <u>458</u>
		3	<del>((404))</del> <u>418</u>
		4	<del>((418))</del> <u>406</u>
		5	<del>((399))</del> <u>408</u>
		9	<del>((328))</del> <u>331</u>
Western Redcedar <sup>(4)</sup>	RC	1-5	<del>((1472))</del> <u>1358</u>
		9	<del>((1458))</del> <u>1344</u>
Ponderosa Pine <sup>(5)</sup>	PP	1-5	<del>((185))</del> <u>200</u>
		9	<del>((171))</del> <u>186</u>
Red Alder	RA	1-5	<del>((521))</del> <u>564</u>
		9	<del>((507))</del> <u>550</u>
Black Cottonwood	BC	1-5	<del>((39))</del> <u>23</u>
		9	<del>((25))</del> <u>2</u>
Other Hardwood	OH	1-5	<del>((251))</del> <u>243</u>
		9	<del>((237))</del> <u>229</u>
Douglas-fir Poles & Piles	DFL	1-5	<del>((975))</del> <u>1061</u>
		9	<del>((961))</del> <u>1047</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Redcedar Poles	RCL	1-5	<del>((1763))</del> <u>1745</u>
		9	<del>((1749))</del> <u>1731</u>
Chipwood <sup>(6)</sup>	CHW	1-5	<del>((1))</del> <u>8</u>
		9	<del>((1))</del> <u>6</u>
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-9	<del>((322))</del> <u>588</u>
Posts <sup>(8)</sup>	LPP	1-9	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-9	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-9	0.50

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

**Washington State Department of Revenue**  
**EASTERN WASHINGTON STUMPAGE VALUE TABLE**  
 ((July 1 through December 31, 2022))  
 January 1 through June 30, 2023

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

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	6	<del>\$((410))</del> <u>416</u>
		7	<del>((424))</del> <u>430</u>
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	6	<del>((304))</del> <u>336</u>
		7	<del>((318))</del> <u>350</u>
Western Redcedar <sup>(4)</sup>	RC	6	<del>((1689))</del> <u>1662</u>
		7	<del>((1703))</del> <u>1676</u>
Ponderosa Pine <sup>(5)</sup>	PP	6	<del>((171))</del> <u>186</u>
		7	<del>((185))</del> <u>200</u>
Other Hardwood	OH	6	1
		7	9

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Redcedar Poles	RCL	6	<del>((1894))</del> <u>1833</u>
		7	<del>((1905))</del> <u>1847</u>
Chipwood <sup>(6)</sup>	CHW	6	1
		7	1
Small Logs <sup>(6)</sup>	SML	6	23
		7	25
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	6-7	<del>((322))</del> <u>588</u>
Posts <sup>(8)</sup>	LPP	6-7	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	6-7	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	6-7	0.50

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

(2) Includes Western Larch.

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

(4) Includes Alaska-Cedar.

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

(6) Stumpage value per ton.

(7) Stumpage value per cord.

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

(9) Stumpage value per lineal foot.

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

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

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

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

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

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

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

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

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

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

The following harvest adjustment tables apply from January 1 through June 30, (~~2022~~) 2023:

**TABLE 9—Harvest Adjustment Table**  
**Stumpage Value Areas 1, 2, 3, 4, 5, and 9**  
 ((~~July 1 through December 31, 2022~~)) January 1 through June 30, 2023

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table**  
**Stumpage Value Areas 6 and 7**  
 ((~~July 1 through December 31, 2022~~)) January 1 through June 30, 2023

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

**TABLE 11—Domestic Market Adjustment**

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

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

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

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will

consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

[Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 22-14-029, § 458-40-660, filed 6/24/22, effective 7/1/22. Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 22-01-185, § 458-40-660, filed 12/20/21, effective 1/1/22. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 21-13-100, § 458-40-660, filed 6/18/21, effective 7/1/21. Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 21-02-020, § 458-40-660, filed 12/28/20, effective 1/1/21. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 20-14-067, § 458-40-660, filed 6/26/20, effective 7/1/20; WSR 20-02-053, § 458-40-660, filed 12/23/19, effective 1/1/20; WSR 19-14-013, § 458-40-660, filed 6/21/19, effective 7/1/19; WSR 19-02-069, § 458-40-660, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 18-14-023, § 458-40-660, filed 6/26/18, effective 7/1/18; WSR 18-02-058, § 458-40-660, filed 12/29/17, effective 1/1/18; WSR 17-14-020, § 458-40-660, filed 6/23/17, effective 7/1/17; WSR 17-02-003, § 458-40-660, filed 12/22/16, effective 1/1/17. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 16-14-035, § 458-40-660, filed 6/28/16, effective 7/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 16-01-069, § 458-40-660, filed 12/14/15, effective 1/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 15-14-019, § 458-40-660, filed 6/22/15, effective 7/1/15; WSR 15-01-095, § 458-40-660, filed 12/17/14, effective 1/1/15. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 14-14-079, § 458-40-660, filed 6/27/14, effective 7/1/14; WSR 14-01-097, § 458-40-660, filed 12/17/13, effective 1/1/14; WSR 13-14-056, § 458-40-660, filed 6/28/13, effective 7/1/13; WSR 13-02-034, § 458-40-660, filed 12/21/12, effective 1/1/13; WSR 12-14-065, § 458-40-660, filed 6/29/12, effective 7/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091 and 84.33.140. WSR 12-02-040, § 458-40-660, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 11-14-051, § 458-40-660, filed 6/29/11, effective 7/1/11; WSR 11-02-014, § 458-40-660, filed 12/29/10, effective 1/1/11; WSR 10-14-095, § 458-40-660, filed 7/6/10, effective 7/6/10; WSR 10-02-032, § 458-40-660, filed 12/29/09, effective 1/1/10; WSR 09-14-109, § 458-40-660, filed 6/30/09, effective 7/1/09; WSR 09-02-043, § 458-40-660, filed 12/31/08, effective 1/1/09; WSR 08-14-085, § 458-40-660, filed 6/27/08, effective 7/1/08; WSR 08-02-064, § 458-40-660, filed 12/28/07, effective 1/1/08; WSR 07-14-095, § 458-40-660, filed 6/29/07, effective 7/1/07; WSR 07-02-039, § 458-40-660, filed 12/26/06, effective 1/1/07; WSR 06-14-064, § 458-40-660, filed 6/30/06, effective 7/1/06; WSR 06-02-005, § 458-40-660, filed 12/22/05, effective 1/1/06; WSR 05-14-087, § 458-40-660, filed 6/30/05, effective 7/1/05; WSR 05-02-040, § 458-40-660, filed 12/30/04, effective 1/1/05; WSR 04-14-033, § 458-40-660, filed 6/29/04, effective 7/1/04; WSR 04-01-125, § 458-40-660, filed 12/18/03, effective 1/1/04; WSR 03-14-072, § 458-40-660, filed 6/26/03, effective 7/1/03. Statutory

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

**WSR 22-22-077**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 31, 2022, 4:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-020.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-400-0030 Who is eligible for refugee cash assistance?, 388-466-0120 Refugee cash assistance (RCA), and 388-466-0150 Refugee employment and training services.

Hearing Location(s): On December 6, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than December 7, 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 December 6, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov), by November 22, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are necessary to align department policies with authorization from the Office of Refugee Resettlement (ORR) director to expand the eligibility period for RCA from eight months to 12 months pursuant to 45 C.F.R. § 400.211 and ORR P.L. 22-12.

Related amendments (effective June 2, 2022) are currently in place via emergency adoption (see WSR 22-13-013 and 20-20-071 [22-20-071]).

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.120.

Rule is necessary because of federal law, 45 C.F.R. § 400.211(b).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Max Gibbs-Ruby, P.O. Box 45470, Olympia, WA 98504-5470, [Max.Gibbs-Ruby@dshs.wa.gov](mailto:Max.Gibbs-Ruby@dshs.wa.gov).

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. No cost-benefit analysis is required; this amendment is exempt under RCW 34.05.328 (5) (b) (vii).

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: This rule proposal is exempt under RCW 19.85.061 because it is being adopted solely to conform with federal policy issued under 45 C.F.R. § 400.211(b). Failure to adopt this rule would not align with federal policy and be a determinant to public health, safety, and welfare.

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.

Scope of exemption for rule proposal:

Is fully exempt.

October 28, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4930.5

AMENDATORY SECTION (Amending WSR 04-19-135, filed 9/21/04, effective 10/22/04)

### **WAC 388-400-0030 Who is eligible for refugee cash assistance?**

- (1) To be eligible for refugee cash assistance (RCA), you must:
- (a) Provide the name of the voluntary agency (VOLAG) which resettled you;
  - (b) Meet the immigration status requirements of WAC 388-466-0005;
  - (c) Meet employment and training requirements of WAC 388-466-0150;
  - (d) Meet income and resource requirements of WAC 388-466-0140;
- and
- (e) Report changes of circumstances as required under WAC 388-418-0005.
- (2) You are not eligible to receive RCA if you:
- (a) Are eligible for temporary assistance for needy families (TANF) or supplemental security income;
  - (b) Have been denied TANF or have been terminated from TANF due to intentional noncompliance with TANF eligibility requirements; or
  - (c) Are a full-time student in an institution of higher education.
- (3) We determine your eligibility and benefit level for RCA using the TANF payment standards under WAC 388-478-0020.
- (4) If you are eligible for RCA you may also be eligible for additional requirements for emergent needs under WAC 388-436-0002.
- (5) If you meet the requirements of this section you are eligible for refugee cash assistance only during the (~~eight~~) 12-month period beginning in the first month you entered the United States (WAC 388-466-0120).

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-19-135, § 388-400-0030, filed 9/21/04, effective 10/22/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.320, and 7 C.F.R. § 400.65, § 400.66, § 400.67, § 400.68, and § 400.69. WSR 02-09-051, § 388-400-0030, filed 4/12/02, effective 5/13/02. Statutory Authority:

RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 01-06-031, § 388-400-0030, filed 3/2/01, effective 4/1/01; WSR 98-16-044, § 388-400-0030, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 20-24-073, filed 11/24/20, effective 12/25/20)

**WAC 388-466-0120 Refugee cash assistance (RCA). (1) Who can apply for refugee cash assistance (RCA)?**

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within (~~thirty~~) 30 days.

**(2) How do I know if I qualify for RCA?**

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than (~~eight~~) 12 months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

**(3) What are the other reasons for not being eligible for RCA?**

You may not be able to get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or supplemental security income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within (~~thirty~~) 30 consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

**(4) If I am an asylee, what date will be used as an entry date?**

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999, as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000, and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

**(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?**

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, (~~eighteen~~) 18 years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of (~~(eighteen)~~) 18, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

**(6) Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?**

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

**(7) What is the effective date of my eligibility for RCA?**

The date DSHS has sufficient information to make an eligibility decision is the date your RCA begins.

**(8) When does my RCA end?**

(a) Your RCA ends on the last day of the (~~(eighth)~~) 12th month starting with the month of your arrival to the United States. Count the (~~(eight)~~) 12 months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, (~~(2000)~~) 2022, May is your first month and (~~(December 2000)~~) April 2023 is your last month of RCA.

(b) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA.

(c) You may receive RCA benefits for more months if the federal office of refugee resettlement extends the eligibility period.

**(9) Are there other reasons why RCA may end?**

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income (~~(and/)~~) or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

**(10) Will my spouse be eligible for RCA, if (~~(he/she)~~) they arrive(~~(s)~~) in the U.S. after me?**

When your spouse arrives in the United States, DSHS determines (~~(his/her)~~) their eligibility for RCA and (~~(/or)~~) other income assistance programs.

(a) Your spouse may be eligible for up to (~~(eight)~~) 12 months of RCA based on (~~(his/her)~~) their date of arrival into the United States.

(b) If you live together, you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on you and your spouse's combined income and resources (WAC 388-466-0140).

**(11) Can I get additional money in an emergency?**

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

**(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?**

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or an administrative hearing (WAC 388-02-0090). Your request must be made within (~~(ninety)~~) 90 days of the date of the decision or action.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250 and 45 C.F.R. § 400.300, 8 U.S.C. § 1522 (e) (1). WSR 20-24-073, § 388-466-0120, filed 11/24/20, effective 12/25/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250 and 2011 1st sp.s. c 15. WSR 13-03-137, § 388-466-0120, filed 1/23/13, effective 2/23/13; WSR 12-19-037, § 388-466-0120, filed 9/12/12, effective 10/13/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.320, Pub. L. No. 110-181, National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 111-08, the Omnibus Appropriations Act of 2009, Division F, Title VI, Section 602; Office of Refugee Resettlement State Letter 09-17 from April 9, 2009; and federal guidance issued on May 15, 2009, by the Food and Nutrition Service, United States Department of Agriculture. WSR 09-21-046, § 388-466-0120, filed 10/14/09, effective 11/4/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-466-0120, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.08.090, 74.08A.320. WSR 02-04-057, § 388-466-0120, filed 1/30/02, effective 2/1/02.]

AMENDATORY SECTION (Amending WSR 16-05-034, filed 2/9/16, effective 3/15/16)

**WAC 388-466-0150 Refugee employment and training services. (1)**

**What are refugee employment and training services?**

Refugee employment and training services provided to eligible refugees may include information and referral, employment oriented case management, job development, job placement, job retention, wage progression, skills training, on-the-job training, counseling and orientation, English as a second language, and vocational English training.

**(2) Am I required to participate in refugee employment and training services?**

If you are receiving refugee cash assistance (RCA) you are required to participate in refugee employment and training services, unless you are exempt.

**(3) How do I know if I am exempt from mandatory employment and training requirements?**

You may be exempt from participation in employment and training requirements if you are:

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

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI and are required to apply for SSI. Your SSI application status may be verified through the SSI facilitator (~~and~~) or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from working and is expected to last at least (~~twelve~~) 12 months. Your disability must be verified by documentation from a behavioral health organization (BHO), (~~and/or~~) regional service area (RSA), or evidence from another medical or mental health professional; or

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

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

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

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

(iv) You are unable to participate in work activities because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from the developmental disabilities administration (DDA), division of vocational rehabilitation (DVR), home and community services (HCS), division of behavioral health and recovery (DBHR), ~~((and/or))~~ a behavioral health organization (BHO), ~~((and/or))~~ regional service area (RSA), or evidence from another medical or mental health professional.

(c) ~~((Sixty))~~ 60 years of age or older.

(d) Unable to participate in work activities because you are the victim of family violence.

**(4) If I am required to participate, what do I have to do?**

You are required to:

(a) Register with your employment service provider;

(b) Accept and participate in all employment opportunities, training, or referrals, determined appropriate by the department.

**(5) What happens if I do not follow these requirements?**

If you refuse without good reason to cooperate with the requirements, you are subject to the following penalties:

(a) If you are applying for refugee cash assistance, you will be ineligible for ~~((thirty))~~ 30 days from the date of your refusal to accept work or training opportunity; or

(b) If you are already receiving refugee cash assistance, your cash benefits will be subject to financial penalties.

(c) The department will notify your voluntary agency (VOLAG) if financial penalties take place.

**(6) What are the penalties to my grant?**

The penalties to your grant are:

(a) If the assistance unit includes other individuals as well as yourself, the cash grant is reduced by the sanctioned refugee's amount for three months after the first occurrence. For the second occurrence, the financial penalty continues for the remainder of the sanctioned refugee's ~~((eight))~~ 12-month eligibility period.

(b) If you are the only person in the assistance unit your cash grant is terminated for three months after the first occurrence. For the second occurrence, your grant is terminated for the remainder of your ~~((eight))~~ 12-month eligibility period.

**(7) How can I avoid the penalties?**

You can avoid the penalties, if you accept employment or training before the last day of the month in which your cash grant is closed.

**(8) What is considered a good reason for not being able to follow the requirements?**

You have a good reason for not following the requirements if it was not possible for you to stay on the job or to follow through on a required activity due to an event outside of your control. See WAC 388-310-1600(3) for examples.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.08.090. WSR 16-05-034, § 388-466-0150, filed 2/9/16, effective 3/15/16. Statutory

Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 2011 1st sp.s. c 15. WSR 13-18-004, § 388-466-0150, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.08.090. WSR 00-22-085, § 388-466-0150, filed 10/31/00, effective 12/1/00.]

**WSR 22-22-079  
PROPOSED RULES  
CRIMINAL JUSTICE  
TRAINING COMMISSION**

[Filed November 1, 2022, 7:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-089.

Title of Rule and Other Identifying Information: Updates to certification, basic academies, and other miscellaneous WAC.

Hearing Location(s): On December 14, 2022, at 10:00 a.m., virtual Zoom meeting. Meeting link can be found on the Washington state criminal justice training commission website at <https://cjtc.wa.gov/about/commission-board-and-meetings>.

Date of Intended Adoption: December 14, 2022.

Submit Written Comments to: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, email [Derek.Zable@cjtc.wa.gov](mailto:Derek.Zable@cjtc.wa.gov), by December 9, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify WAC language for stakeholders and the public and to update WAC to use current agency language, policies, and practices.

Reasons Supporting Proposal: Improved clarity allows for easier comprehension and understanding of what stakeholders are required to do.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Chapter 43.101 RCW.

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

Name of Agency Personnel Responsible for Drafting: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, 206-835-7350; Implementation: Henry Gill, Chad Arceneaux, and Kayla Wold, 19010 1st Avenue South, Burien, WA 98148, 206-835-7300; and Enforcement: Mike Devine, Christine Rickert, and Kayla Wold, 19010 1st Avenue South, Burien, WA 98148, 206-835-7300.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

October 26, 2022  
Derek Zable  
Records Manager

**OTS-4138.1**

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-01-310 Definitions for Title 139 WAC.** The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Applicant** means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(3) **Certified officer**, unless otherwise specified, means any full-time, general authority peace officer, tribal police officer with a recognized certified tribe, and corrections officer as defined in RCW 43.101.010 (6), (10), and (12).

(4) **Commission** means the Washington state criminal justice training commission.

(5) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

(6) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

(7) **Denial** means a commission decision to refuse to grant certification to a prospective certified officer.

(8) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

(9) **Executive** means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

(10) **Expired certification** means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

(11) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3) (h);

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim, white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

(12) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

(13) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

(14) **General authority Washington law enforcement agency** means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

(15) **General authority Washington peace officer** means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(16) **Lapsed certification** means that a certified officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

(17) **Limited authority Washington law enforcement agency** means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services,

the state gambling commission, the state department of corrections, and the office of independent investigations.

(18) **Limited authority Washington peace officer** means any full-time fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

(19) **Petitioner** means the commission's certification division.

(20) **Probationary periods or probationary terms** means a determination by a hearing panel that a certified officer may work under supervision based on agreed-upon terms.

(21) **Recruit** means an individual registered for, selected for, accepted to, enrolled in, or required to complete a basic training academy.

(22) **Reserve officer** means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce criminal laws of this state.

~~((22))~~ (23) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

~~((23))~~ (24) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as a certified officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

~~((24))~~ (25) **Revocation** means to cancel a certified officer's certification.

~~((25))~~ (26) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

~~((26))~~ (27) **Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

~~((27))~~ (28) **Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

~~((28))~~ (29) **Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-01-310, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-4135.3

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-05-210 Process for equivalency.** (1) An officer whose certification, commission, or licensing has been revoked or suspended, or is under review by this state or any other state or territory is not eligible to receive certification through an equivalency academy, regardless of the officer's prior years of service.

(2) A diploma of equivalent basic law enforcement academy or corrections officers academy is issued to (~~applicants~~) recruits who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection (9) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Certified officers whose certification, commission, or licensing has lapsed because of a break in service in Washington or any other state or territory for more than 24 months but less than 60 months;

(b) Fully commissioned officers of a general authority or certified tribal law enforcement agency in Washington state who otherwise are eligible to attend the basic law enforcement academy;

(c) Fully commissioned officers who have been certified by completing a basic training program in Washington or another state;

(d) Corrections officers as defined in RCW 43.101.010(6) who otherwise are eligible to attend the corrections officers academy;

(e) Corrections officers who have successfully completed an approved corrections officers academy in Washington or another state; or

(f) Persons who have not attained commissioned officer status but have successfully completed a basic law enforcement academy recognized as fully equivalent to Washington's basic law enforcement academy by the commission and within 12 months of the date of completion has received a conditional offer of employment as a fully commissioned officer in Washington state.

(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.

(5) (~~Applicants~~) Recruits who must participate in the equivalency academy to become a certified officer must attend an academy within six months of hire as a condition of employment.

(6) It is the responsibility of (~~an applicant's~~) a recruit's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner and all requirements within this section are met.

(7) The decision to request an officer's participation in the equivalency process is at the discretion of the sheriff or chief of the officer's employing agency who must advise the commission of that decision. The commission has final approval of the officer's acceptance into the equivalency academy.

(8) The commission shall have authority to approve (~~an applicant~~) a recruit for participation in the equivalency process.

(9) The (~~applicant's~~) recruit's employing agency must submit to the commission the following documentation as a condition of participating in the equivalency process:

(a) A statement of the (~~applicant's~~) recruit's health and physical condition including a physician signature;

- (b) A liability release agreement by the (~~(applicant)~~) recruit;
- (c) Previous employment agencies with dates of employment;
- (d) Documentation of completion of the previous training program;
- (e) Written syllabus detailing specific areas of training and hours of training;
- (f) Documentation of current certification status; and
- (g) For peace and tribal officers:
- (i) A record of the (~~(applicant's)~~) recruit's firearms qualification;
- (ii) Verification of comparable emergency vehicle operations training (EVOC).

If this has not been completed previously, the (~~(applicant)~~) recruit must complete the commission's current basic law enforcement EVOC, either by an instructor certified by the commission or through the Washington state patrol; all costs associated with this training will be the responsibility of the law enforcement agency.

(10) Upon completion of the equivalency process and review and evaluation of the (~~(applicant's)~~) recruit's performance, the commission shall issue a diploma and a certificate of certification.

(11) If the (~~(officer)~~) recruit has not met the qualifications to satisfactorily complete (~~(the)~~) an equivalency academy, the commission shall:

- (a) Issue a diploma and certificate of certification upon satisfactory completion of any required additional training; or
- (b) Require the (~~(officer)~~) recruit to attend the basic law enforcement academy or the corrections officers academy.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-210, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-220 Backgrounding requirement for admission (~~(to)~~) in the basic law enforcement (~~(academy)~~) academies**. It is the responsibility of each (~~(sponsoring or applying)~~) agency to conduct a (~~(complete criminal records check to include a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate agency or agencies. No individual will be granted academy admission or allowed continued participation if the individual is not otherwise eligible for certification or has been convicted of a crime that would make him or her ineligible for certification.~~

Each application for academy attendance must be accompanied by a written attestation by the applying agency that (1) the criminal records check has been completed, and (2) there are no disqualifying

convictions)) background investigation of its applicant, as outlined by RCW 43.101.095, as a precondition of academy admission.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-220, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-220, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-220, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-230 Physical requirements for admission to the basic law enforcement academy.** (~~Each successful applicant~~) (1) For admission to ((a)) the basic law enforcement academy, ((sponsored or conducted by the commission)) each recruit must possess good health and physical capability to actively and fully participate in defensive tactics training and other required physical activities.

(2) In order to minimize risk of injury and maximize the benefit of such participation, each recruit in any academy session must, as a precondition of ((his or her)) their academy ((attendance)) admission, demonstrate a requisite level of physical fitness, as established by the commission.

~~((For this purpose, each academy applicant will be assessed in the areas of aerobic capacity, strength, and flexibility,))~~ (3) Each recruit must be evaluated in accordance with the ((requirements)) policies and procedures established by the commission.

(4) Failure to demonstrate a requisite level of fitness will result in ineligibility for academy ((admissions and/or attendance)) admission.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-230, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-230, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 91-14-011, § 139-05-230, filed 6/24/91, effective 7/25/91; WSR 91-01-043, § 139-05-230, filed 12/12/90, effective 7/1/91; WSR 89-13-023 (Order 12C), § 139-05-230, filed 6/13/89; WSR 86-19-021 (Order 1-B), § 139-05-230, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-240 Completion requirements of basic law enforcement ((academy)) academies.** Each recruit in a basic law enforcement academy will receive a ~~((certificate of completion))~~ diploma only upon full and successful completion of the academy ~~((process))~~ as prescribed by the commission. The performance of each recruit ~~((will))~~ shall be evaluated as follows:

(1) Academic performance.

(a) A standardized ((examination)) evaluation process will be utilized ((by)) in all basic law enforcement academies sponsored or conducted by the commission in evaluating the level of scholastic achievement of each recruit.

(b) Such process ~~((will))~~ shall include the application of a designated minimum passing score ~~((to each subject area))~~ for written examinations and the availability of a retesting procedure.

(c) Failure to achieve the required minimum passing score will result in termination of academy ~~((assignment))~~ enrollment.

(2) Practical skills.

(a) A standardized evaluation process will be utilized ~~((by))~~ in all basic law enforcement academies sponsored or conducted by the commission in evaluating the level of ~~((practical performance))~~ skill proficiency of each recruit.

(b) Such process ~~((will))~~ shall include the application of ~~((pass/fail grading to))~~ a designated ~~((instructional objectives for physical performance))~~ minimum passing score of all skill proficiencies identified by the commission and the availability of a retesting procedure.

(c) Failure to achieve a final passing grade in each practical skills dimension will ~~((preclude a certificate of completion))~~ result in termination of academy enrollment.

(3) Conduct and participation.

(a) Each recruit will be required to participate fully in all academy classes and adhere to all rules, regulations, and policies of the commission.

(b) Failure to ~~((maintain an exemplary standard of conduct or to))~~ adhere to all rules, regulations, and policies of ~~((a basic law enforcement academy sponsored or conducted by))~~ the commission ~~((may))~~ will result in termination of academy ~~((assignment))~~ enrollment.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-240, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-240, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 93-13-098, § 139-05-240, filed 6/21/93, effective 7/22/93; WSR 86-19-021 (Order 1-B), § 139-05-240, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

**WAC 139-05-242 Readmission to the basic law enforcement academy.**

No person may be readmitted to ~~((the))~~ any basic law enforcement ~~((training))~~ academy except as provided in this section.

(1) Any request for readmission ~~((to any academy))~~ must be made and submitted by the individual's employing ~~((or sponsoring))~~ agency head, or designee, in accordance with commission policies and procedures.

(2) Any individual whose academy enrollment was terminated ~~((from any academy))~~ for academic failure, ~~((for))~~ skills deficiency, disciplinary reasons other than those specified ~~((by))~~ in subsection (3) of this section, or who ~~((has))~~ had voluntarily withdrawn ~~((from any academy))~~ for any reason, may be readmitted to a subsequent academy session only if:

(a) The ~~((head of the))~~ individual's current employing agency head, or their designee, submits to the commission a written request for readmission of the individual to the academy ~~((program));~~ and

(b) The executive director of the commission, or designee, is satisfied that any conditions to the individual's readmission specified by the executive director, or designee, have been met.

(3) Any person (~~(dismissed from any academy)~~) whose academy enrollment was terminated for an integrity violation(~~(r)~~) including, but not limited to: Cheating, the making of materially false statements, the commission of a crime, or other violation (~~(not constituting disqualifying misconduct as defined in RCW 43.101.010(7), will not be eligible)~~) contained in RCW 43.101.105 will be ineligible for readmission to any subsequent academy within (~~(twenty-four)~~) 24 months from the date of dismissal (~~(. Such ineligibility will not be affected by any new employment or reemployment during the period of ineligibility specified in the preceding sentence of this subsection)~~) regardless of employer or employment status.

(4) An exception to the ineligibility period specified in subsection (3) of this section may be granted at the sole discretion of the commission executive director, or designee, based upon mitigating circumstances.

(a) No person may be considered for such early readmission after an integrity violation dismissal unless a written request is made by the head of the agency employing the individual at the time of the request.

(b) Requests for early readmission must follow applicable commission policies and procedures to be considered.

(c) The executive director's, or designee's, decision under this subsection shall be subject to review only for abuse of discretion.

(5) After the ineligibility period specified in subsection (3) of this section has passed, or after an exception has been granted by the commission under subsection (4) of this section, the person previously dismissed for an integrity violation may be readmitted to a subsequent academy session only (~~(if he or she satisfies)~~) the conditions of subsection (2) of this section are satisfactorily met.

(~~(+5)~~) (6) For purposes of this section, reserves and volunteers will be deemed to be employees of the agencies which sponsor them for participation in a training academy.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-242, filed 9/28/05, effective 10/29/05; WSR 04-19-050, § 139-05-242, filed 9/14/04, effective 10/15/04; WSR 00-17-017, § 139-05-242, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 93-13-103, § 139-05-242, filed 6/21/93, effective 7/22/93.]

AMENDATORY SECTION (Amending WSR 19-07-037, filed 3/13/19, effective 4/13/19)

**WAC 139-05-250 Basic law enforcement curriculum.** The basic law enforcement and reserve academy curriculum of the commission may include, but not be limited to, the following core subject areas with common threads of communications, community policing, and professional ethics throughout:

- (1) Orientation and history of policing;
- (2) Criminal law;
- (3) Criminal procedures;
- (4) Patrol procedures;
- (5) Crisis intervention per RCW 43.101.427;
- (6) Emergency vehicle operations (~~(course)~~);
- (7) Report writing;
- (8) Traffic law;

- (9) Firearms;
- (10) Defensive tactics; ((and))
- (11) Criminal investigation;
- (12) Use of force training consistent with permissible uses of force per RCW 43.101.490;
- (13) Substance use disorders per RCW 43.101.205;
- (14) Vehicular pursuits per RCW 43.101.225;
- (15) Victim centered and trauma-informed approach to policing per RCW 43.101.274;
- (16) Ethnic and cultural diversity per RCW 43.101.280;
- (17) Hate crimes per RCW 43.101.290;
- (18) Child abuse and neglect per RCW 43.101.365;
- (19) Motorcycle profiling per RCW 43.101.419;
- (20) Violence de-escalation training as prescribed in WAC 139-11-020 per RCW 43.101.450;
- (21) Mental health training as prescribed in WAC 139-11-020 per RCW 43.101.452; and
- (22) Domestic violence reports and situations per RCW 10.99.030 and 10.99.033.

[Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-037, § 139-05-250, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-250, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-250, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.010(2). WSR 93-13-097, § 139-05-250, filed 6/21/93, effective 7/22/93. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-250, filed 9/10/86.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 139-05-911 Tribal certification.

#### **OTS-4136.2**

#### NEW SECTION

**WAC 139-06-015 Tribal certification.** Tribal governments may voluntarily request certification for their police officers.

(1) Tribal governments requesting certification for their police officers must enter into a written agreement with the commission.

(2) The agreement must require the tribal law enforcement agency and its officers to comply with all certification requirements as those requirements are applied to all other officers certified under this chapter and the policy of the commission.

(3) To ensure clarity regarding the requirements with which the tribal government and its police officers must comply should the trib-

al government request certification, a tribal government may first request consultation with the commission.

(4) Applicants for certification as tribal police officers shall meet the requirements of this chapter and the policy of the commission as those requirements are applied to certification of all officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of all officers.

[ ]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-030 Investigative authority and duty to cooperate.**

(1) Except when otherwise required by RCW 43.101.105 (2) or (3), the commission has authority to undertake an investigation regardless of the status of any administrative or criminal investigations into the matter by other agencies.

(2) An agency shall cooperate in any investigation conducted by the commission regarding a certified officer's certification status. This includes providing records and information when requested.

(a) Upon receipt of a request an agency has 30 days to provide requested records.

(b) If the totality of the circumstances supports a conclusion that a certified officer resigned or retired in anticipation of discipline, then the ~~((employing agency shall))~~ agency who employed the officer at the time of the misconduct shall timely conduct and complete an investigation and provide all relevant information to the commission in accordance with WAC 139-06-020(4) and as if the certified officer were still employed by the agency ~~((under RCW 43.101.135))~~.

(3) A certified officer must authorize the release of their personnel file to the employing agency and the commission including disciplinary, termination, civil or criminal investigation, and other records and information directly related to a certification before the commission under RCW 43.101.095 and 43.101.105.

(4) Requests from the commission for records under chapter 43.101 RCW are not subject to any exemptions, redactions, waiting periods, or timelines associated with the Public Records Act, chapter 42.56 RCW.

(5) A certified officer must also consent to and facilitate a review of the certified officer's social media accounts when relevant to an investigation brought before the commission pursuant to RCW 43.101.095(4).

(a) The certified officer is not required to provide login information pursuant to RCW 49.44.200.

(b) The release of records and information may not be delayed, limited, or precluded by any agreement or contract between the certified officer or the certified officer's union and the entity responsible for the records and information.

(6) An employing agency may not enter into any agreement or contract with a certified officer or union that:

(a) Agrees not to report conduct or to delay reporting or to preclude disclosure of any relevant records and information to the commission, including any promise not to inform the commission that the certified officer may have committed misconduct in exchange for allow-

ing a certified officer to resign or retire or for any other reason;  
or

(b) Allows the agency to destroy or remove any personnel record while the certified officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-030, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-030, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-100 Outcomes for determinations of misconduct—Suspension, probation, retraining or dismissal of the statement of charges.**

(1) When an applicant or certified officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may convene a hearing panel to review the facts and, with any finding of misconduct, determine any appropriate outcomes. Outcomes include any or multiple of the following: Denial, suspension, probation, ~~((or))~~ revocation of certification, ~~((or))~~ remedial training, or dismissal of the statement of charges. In determining an appropriate outcome following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

- (a) Information provided by the complainant(s), if any;
- (b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;
- (c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;
- (d) Any information obtained by the commission through its own investigation or research;
- (e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and
- (f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended the certified officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate the certified officer based solely on imposition of suspension or probation by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating the certified officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as certified officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3) if the reserve officers are certified pursuant to RCW 43.101.095.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-100, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

### OTS-4137.1

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-07-020 Background information.** (1) Hiring agency background checks must include the following records and information for new applicants:

- (a) Criminal history;
- (b) National decertification indices or data banks;
- (c) Commission records including employment history and certification status;
- (d) All disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct, to include the outcome of any investigation regardless of the result, and the reason for separation from employment. Previous law enforcement or corrections employers must provide this information, including the reason for separation from employment with the agency, within 30 days of receiving a written request from the agency conducting the background check;
- (e) Verification from the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any impeachment disclosure lists;
- (f) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined in commission policy;
- (g) A review of the applicant's social media accounts;
- (h) Verification of citizenship status as either a citizen of the United States of America or a lawful permanent resident;
- (i) A psychological examination and recommendation administered by a qualified professional pursuant to chapter 18.71 or 18.83 RCW, in compliance with standards established in commission policy per WAC 139-07-030;
- (j) A polygraph or equivalent assessment administered by a qualified professional with appropriate training and in compliance with standards established in commission policy per WAC 139-07-040; and
- (k) Any basis for disqualification listed under RCW 43.101.105 (2) or (3).

(2) An applicant, including new hires and in-state laterals, may be offered employment by more than one agency. The background results

may be shared with more than one agency under the following circumstances:

(a) The hiring agency which initiated the background investigation agreed to share the results of the investigation in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to have the report;

(c) The background investigation was completed within six months of the request to share records; and

(d) The job analyses of both agencies are substantially similar.

(3) Prior to a potential officer's registration into an academy, the hiring agency shall certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as an officer.

(4) Backgrounds, older than six months, of an officer shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-07-020, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-19-066, § 139-07-020, filed 9/17/18, effective 10/18/18. Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-020, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-020, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-07-040 Polygraph examination or other truth verification assessment.** (1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

(2) Standards for polygraph assessments:

(a) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;

(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;

(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;

(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and

(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.

(3) Polygraph assessments:

(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;

(b) Polygraph examiners shall ask questions including, but not limited to, the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers;

(c) Model questions shall be adopted in commission policy; and

(d) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:

(a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;

(b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;

(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and

(d) A motion sensor.

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

(9) Other truth verification assessments must be approved by the commission with additional rules established by the commission's governing body regarding its standards of use in fulfilling RCW 43.101.095.

(10) Polygraph reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-07-040, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW

43.101.080. WSR 13-02-060, § 139-07-040, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-040, filed 3/10/10, effective 4/10/10.]

## OTS-4156.1

AMENDATORY SECTION (Amending WSR 22-19-038, filed 9/14/22, effective 10/15/22)

**WAC 139-10-230 Corrections officers academy eligibility and curriculum.** (1) All employees whose primary job function is to provide for the custody, safety, and security of adult prisoners in jails and detention facilities must complete the corrections officers academy. Representative job classifications include, but are not limited to, custody and corrections officers.

(2) The corrections officers academy curriculum shall be at least (~~(400 instructional hours)~~) 10 weeks in length and may include, but not be limited to, the following subject matter areas:

- (a) Core skills
  - (i) Observation skills
  - (ii) Communication skills
  - (iii) Security management
  - (iv) Supervision of inmates
  - (v) Discipline of inmates
  - (vi) Proper use of physical force
  - (vii) Writing skills
- (b) Key skills
  - (i) Legal issues
  - (ii) Dealing with aggressive behavior
  - (iii) Dealing with medical problems
  - (iv) Dealing with mental illness problems
  - (v) Problem solving
  - (vi) Report writing
  - (vii) Avoiding inmate manipulation
  - (viii) Booking and classification
  - (ix) Fingerprinting
- (c) Related skills
  - (i) Stress management
  - (ii) Physical fitness
  - (iii) Professionalism
  - (iv) Human relations/cultural awareness
  - (v) Historical intersection of race and corrections.

[Statutory Authority: RCW 43.101.080. WSR 22-19-038, § 139-10-230, filed 9/14/22, effective 10/15/22; WSR 00-17-017, § 139-10-230, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 87-19-105 (Order 15-D), § 139-10-230, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-10-230, filed 9/10/86. Formerly WAC 139-36-031.]

**WSR 22-22-080  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed November 1, 2022, 7:23 a.m.]

Continuance of WSR 22-19-063.

Preproposal statement of inquiry was filed as WSR 21-11-098.

Title of Rule and Other Identifying Information: Due to technical issues, the original hearing held on October 27, 2022, at 10:30 a.m. was not accessible to the public.

Hearing Location(s): On December 6, 2022, at 10:30 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Zoom link <https://us02web.zoom.us/j/83650387107>, Meeting ID 836 5038 7107, Dial In 253-215-8782.

Date of Intended Adoption: December 7, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by November 30, 2022.

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

Statutory Authority for Adoption: RCW 41.50.050.

November 1, 2022  
Rubi Reaume  
Rules Coordinator

**WSR 22-22-098**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed November 2, 2022, 8:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-161.

Title of Rule and Other Identifying Information: Chapter 392-136A WAC, Finance—Shared leave.

Hearing Location(s): On December 8, 2022, at 11:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on office of superintendent of public instruction (OSPI) rules web page [k12.wa.us/policy-funding/ospi-rulemaking-activity](http://k12.wa.us/policy-funding/ospi-rulemaking-activity). The hearing will be held as a virtual public hearing, without a physical meeting space. For participation questions, please email [kristin.murphy@k12.wa.us](mailto:kristin.murphy@k12.wa.us).

Date of Intended Adoption: December 12, 2022.

Submit Written Comments to: T.J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email [Thomas.kelly@k12.wa.us](mailto:Thomas.kelly@k12.wa.us), by December 8, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, OSPI rules coordinator, phone 360-725-6133, TTY 360-664-3631, email [kristin.murphy@k12.wa.us](mailto:kristin.murphy@k12.wa.us), by December 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing changes to the shared leave rules to align with current language in RCW 41.04.650 through 41.04.671. The purpose is to clearly articulate changes to the shared leave statutes as applicable to school district staff and educational service district staff. Proposed updates, in alignment with statute, include sections related to definitions, eligibility, and use of shared leave.

Reasons Supporting Proposal: Shared leave statutes were amended by the Washington state legislature (HB 2739 (2020)). The proposed changes to chapter 392-136A WAC align with those made to the authorizing and related statutes.

Statutory Authority for Adoption: RCW 28A.400.380.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Thomas Kelly, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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

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

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small businesses and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

November 2, 2022  
Chris P. S. Reykdal

## OTS-4139.1

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

**WAC 392-136A-020 Definitions.** As used in this chapter the term:

- (1) "Annual leave" means vacation leave that an employee accrues and is maintained in records of a district for employees eligible to accrue annual leave.
- (2) "District" means a school district or an educational service district.
- (3) "Domestic violence" ((means:
  - (a) ~~Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members;~~
  - (b) ~~Sexual assault of one family or household member by another family or household member; or~~
  - (c) ~~Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member~~) has the same meaning as set forth in RCW 41.04.655.
- (4) "Donated annual leave" means the amount of annual leave donated by a leave donor under the shared leave program.
- (5) "Donated sick leave" means the amount of sick leave donated by a leave donor under the shared leave program.
- (6) "Donated personal holiday" means the amount of personal holiday donated by a leave donor under the shared leave program of an educational service district pursuant to RCW 1.16.050.
- (7) "Employee" means any school district or educational service district employee entitled to use and accrue annual and/or sick leave and for whom accurate leave records are maintained.
- (8) "Employee's relative" means the employee's spouse, registered domestic partner, child, stepchild, grandchild, grandparent, parent, or sibling(~~(, or other close relative by blood or marriage)~~).
- (9) "Extraordinary or severe" means serious or extreme and/or life threatening.
- (10) "Family or household members" has the same meaning as set forth in RCW ((~~26.50.010~~) 10.99.020).
- (11) "Household members" means persons who reside in the same home who have reciprocal duties to and do provide financial support for one another. The term does not include persons sharing the same house when the living style is primarily that of a dormitory or commune.
- (12) "Leave donor" means an employee who has an approved (~~written~~) request for the transfer of annual leave, sick leave, or personal holiday to the shared leave program.
- (13) "Leave recipient" means a current employee who has an approved application to receive shared leave.
- (14) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care(~~(, for a period of up to sixteen weeks after the birth or placement)~~).

(15) "Personal holiday" means the additional paid holiday per calendar year granted to an educational service district employee pursuant to RCW 1.16.050.

(16) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(17) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(18) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(19) "Sick leave" means leave granted to an employee for the purpose of absence from work with pay in the event of illness, injury, and emergencies as authorized in RCW 28A.400.300.

(20) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(21) "State employer" means a state agency, the legislature, an institution of higher education, or a related higher education board.

(22) "Uniformed services" means the armed forces, the Army National Guard, and the Air National Guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time National Guard duty, or state active duty, the commissioned corps of the Public Health Service, the Coast Guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(23) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed as defined in this section.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-020, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

**WAC 392-136A-030 Eligibility.** In the event a district implements a shared leave program, an employee shall be eligible to receive shared leave if the district has determined the employee meets the following conditions:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief

in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault, or stalking;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;

(g) Needs the time for parental leave; or

(h) Is sick or temporarily disabled because of pregnancy disability.

(2) The condition(s) listed in subsection (1) of this section has caused, or is likely to cause, the employee to go on leave without pay or terminate district employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has (~~exhausted~~) depleted or will shortly (~~exhaust~~) deplete leave in accordance with RCW 41.04.665(13) and WAC 392-136A-040. (~~If the employee qualifies under subsection (1)(g) or (h) of this section, the employee is not required to deplete all of his or her annual leave or sick leave in accordance with WAC 392-136A-040.~~)

(5) The employee has abided by district policies regarding:

(a) Sick leave use if the employee qualifies under subsection

(1)(a), (d), (g), or (h) of this section; or

(b) Military leave use if the employee qualifies under subsection

(1)(b) of this section.

(6) If the illness or injury is work-related, the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.

(7) The employee's job is one in which annual leave, sick leave, military leave, or personal holiday can be used and accrued.

(8) In accordance with RCW 41.04.665 (1)(f), and until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an employee may receive shared leave as a result of the 2019 novel coronavirus (COVID-19). The use of shared leave may be permitted if the employee, or a relative, or household member is isolated or quarantined as recommended, requested, or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to the 2019 novel coronavirus (COVID-19).

A school district may permit use of shared leave under this subsection without considering the requirements of subsections (1) through (5) of this section.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-030, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

**WAC 392-136A-040 ((Exhaustion)) Depletion of leave.** (1) Employees who qualify for shared leave under WAC 392-136A-030 (1)(a) must first use all of their personal holiday, accrued sick leave, and accrued annual leave before using shared leave. The employee is not required to deplete all of their accrued annual and sick leave and can maintain up to 40 hours of annual leave and 40 hours of sick leave.

(2) Employees who qualify for shared leave under WAC 392-136A-030 (1)(b) must first use all of their personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. The employee is not required to deplete all of their accrued annual leave and paid military leave allowed under RCW 38.40.060 and can maintain up to 40 hours of annual leave and 40 hours of paid military leave.

(3) Employees who qualify for shared leave under WAC 392-136A-030 (1)(c) and (d) must first use all personal holiday and annual leave that they have accrued before using shared leave. The employee is not required to deplete all of their accrued annual leave and can maintain up to 40 hours of annual leave.

(4) Employees who qualify for shared leave under WAC 392-136A-030 (1)(e) or (f) must first use all personal holiday, sick leave, and annual leave before using shared leave.

(5)(a) Educational service district employees who qualify for shared leave under WAC 392-136A-030 (1)(g) and/or (h) must first use their personal holiday before using shared leave; and

(b) Employees who qualify for shared leave under WAC 392-136A-030 (1)(g) and/or (h) are not required to deplete all of their accrued annual leave and sick leave and can maintain up to (~~forty~~) 40 hours of annual leave and (~~forty~~) 40 hours of sick leave.

(c) Employees qualifying for shared leave under WAC 392-136A-030 (1)(g) and/or (h) must use leave in accordance with RCW 41.04.671.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-040, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

**WAC 392-136A-045 Maximum amount.** (1) The district determines the amount of shared leave, if any, which a leave recipient may receive. However, a leave recipient must not receive more than (~~five hundred twenty-two~~) 522 days of shared leave during total district employment.

Districts are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

(2) The district may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 392-136A-070.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-045, filed 5/24/19, effective 6/24/19.]

AMENDATORY SECTION (Amending WSR 19-12-013, filed 5/24/19, effective 6/24/19)

**WAC 392-136A-075 Annual conversion of accumulated sick leave.**

The provisions of this chapter shall not reduce the ability of the employee to convert accumulated sick leave under WAC ((~~392-136A-015~~)) 392-136-015.

[Statutory Authority: RCW 28A.400.380. WSR 19-12-013, § 392-136A-075, filed 5/24/19, effective 6/24/19.]

**WSR 22-22-099**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed November 2, 2022, 8:56 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310 (4) (f).

Title of Rule and Other Identifying Information: WAC 110-15-0210  
Tiered reimbursement and quality improvement awards.

Hearing Location(s): On December 6, 2022, telephonic. Make oral comments by calling 360-522-2826 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including December 6, 2022, will be considered.

Date of Intended Adoption: December 8, 2022.

Submit Written Comments to: DCYF rules coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by December 6, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by December 2, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules implement section 305, chapter 199, Laws of 2021, which requires the department to establish a dual language designation and provide subsidy rate enhancements or site-specific grants for licensed or certified child care providers and early childhood education and assistance program (ECEAP) or birth-to-three ECEAP contractors who are given the dual language designation.

Reasons Supporting Proposal: The proposed dual language rate enhancement supports a language access plan within licensed and certified child care facilities that centers equity and access for immigrants, multilingual providers, caregivers, and families.

Statutory Authority for Adoption: RCW 43.216.592.

Statute Being Implemented: RCW 43.216.592.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Athena Jiménez-Manalo, 360-688-0195; Implementation and Enforcement: DCYF, state-wide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5) [(a)] (i). Further, DCYF does not voluntarily make that section applicable to the adoption of these rules.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

November 2, 2022  
 Brenda Villarreal  
 Rules Coordinator

**OTS-3877.3**

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

**WAC 110-15-0210 Tiered reimbursement ((and)), quality improvement awards, and dual language enhancements.** (1) Providers receiving payment under the WCCC program will receive a tiered reimbursement as outlined in the ((the)) Early Achievers Operating Guidelines, available on DCYF's website. ((the))

(2) Quality improvement awards, as described by chapter 43.216 RCW, are reserved for early achievers participating providers offering programs to an enrollment population consisting of at least five percent of children receiving a state subsidy for licensed family homes and at least five percent of nonschool age children receiving subsidy for licensed centers.

(a) Qualifying state subsidy programs include working connections child care (WCCC), seasonal child care (SCC), DCYF child welfare child care programs, homeless child care program (HCCP), ECLIPSE and medic-aid child care programs. Other qualifying programs may include those supported by municipalities, colleges or universities, local school districts, or federally recognized tribal organizations.

(i) Participants providing homeless child care program, ECLIPSE, or medicaid services must present DCYF with information indicating that services were provided under these programs.

(ii) Participants providing subsidized child care supported by municipalities, colleges or universities, local school districts, or federally recognized tribal organizations must present DCYF with information indicating that services were provided under these programs.

(b) Percent subsidy calculations are derived from a monthly average of the number of children receiving qualifying subsidy divided by the monthly average licensed capacity of a specific provider over a ((twelve-month)) 12-month period.

(i) The ((twelve-month)) 12-month period utilized for the above calculation will include the ((twelve)) 12 months prior to the formal release of a facility's early achievers rating.

(ii) Facilities must have provided care at least one day in a given month for that month to be utilized in the above calculation.

(3) Eligible providers may receive a dual language enhancement.

(a) For purposes of this subsection, "eligible providers" means providers who:

(i) Accept WCCC, SCC, or CWCC payments;

(ii) Are enrolled in the early achievers program; and

(iii) Meet the requirements for the dual language designation standard described in the *Early Achievers Operating Guidelines, available on DCYF's website.*

(b) Dual language enhancements must be spent on professional development training, the purchase of dual language and culturally ap-

propriate curricula and accompanying training programs, instructional materials, increased wages for individual staff who provide bilingual instruction, or other related expenses.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0210, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0210, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 16-19-107, § 170-290-0210, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 13-21-113, § 170-290-0210, filed 10/22/13, effective 11/22/13.]

**WSR 22-22-100**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed November 2, 2022, 9:44 a.m.]

Continuance of WSR 22-19-093.

Preproposal statement of inquiry was filed as WSR 22-19-117.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-464-0001 Am I required to cooperate with quality assurance?

Hearing Location(s): On November 22, 2022, at 10:00 a.m., at Office Building 2, the 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 November 23, 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 November 22, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, 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), by November 8, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments proposed under this filing will more accurately align rule language with federal regulations related to quality control for the Supplemental Nutrition Assistance Program (SNAP), specifically clarifying which programs these quality control requirements apply to.

This notice is to announce a change in the previously scheduled public hearing on this proposed rule making, from October 25, 2022, to November 22, 2022. The previously scheduled public hearing on October 25, 2022, was not held due to a service-wide network outage, and the public hearing for this proposed rule making is rescheduled to November 22, 2022. This notice also extends the written comment deadline to 5:00 p.m. on November 22, 2022.

Reasons Supporting Proposal: See above.

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

Rule is necessary because of federal law, 7 C.F.R. 275.12.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Troy Burgess, P.O. Box 45470, Olympia, WA 98504-5470, 360-584-5162.

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, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

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

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

November 1, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4912.1

AMENDATORY SECTION (Amending WSR 11-14-084, filed 7/1/11, effective 8/1/11)

**WAC 388-464-0001 Am I required to cooperate with quality ((assurance)) control?** (1) To be eligible for ~~((temporary assistance for needy families (TANF), state family assistance (SFA), or food assistance through))~~ basic food assistance, transitional food assistance (TFA), or the Washington combined application project (WASHCAP), ~~((the following persons))~~ all household members must cooperate in the quality ~~((assurance (QA)))~~ control (QC) review process ~~((~~

~~(a) All adult recipients or payees in a TANF or SFA assistance unit (AU); or~~

~~(b) All household members in a Basic Food, TFA or WASHCAP AU).~~

(2) If someone who must cooperate under subsection (1) of this section refuses to cooperate, your ~~((AU))~~ assistance unit (AU) is ineligible for benefits from the date ~~((QA))~~ QC has determined that you are refusing to cooperate until the person meets ~~((QA))~~ QC requirements or ~~((~~

~~(a) For TANF/SFA clients, one hundred twenty days from the end of the annual QA review period; or~~

~~(b) For Basic Food, TFA, or WASHCAP members, the penalty period is one hundred twenty-five))~~ 125 days from the end of the annual ~~((QA))~~ QC review period.

(3) If a person leaves a basic food AU that is currently disqualified for refusing to cooperate in the ~~((QA))~~ QC review process, the penalty for refusal to cooperate follows that person and continues for the AU that includes the person(s) who refused to cooperate. If we cannot determine which person refused to cooperate, the penalty continues for the AU that includes the head of household at the time ~~((QA))~~ QC found your AU refused to cooperate.

(4) The ~~((QA))~~ QC review period covers the federal fiscal year, which runs from October 1st of one calendar year through September 30th of the following calendar year.

(5) People applying for ~~((TANF, SFA, or))~~ basic food after the penalty period in subsection (2) of this section has ended must provide verification of all eligibility requirements. However, if your AU is eligible for expedited service under WAC 388-406-0015, you only need to provide expedited service required verifications.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090 and 7 C.F.R. § 273.2 (d) (2). WSR 11-14-084, § 388-464-0001, filed 7/1/11, effective 8/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-464-0001, filed 7/31/98, effective 9/1/98.]

## WSR 22-22-101

## PROPOSED RULES

## DEPARTMENT OF REVENUE

[Filed November 2, 2022, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-097.

Title of Rule and Other Identifying Information: WAC 458-20-300  
Capital gains excise tax—Overview and administration.

Hearing Location(s): On December 6, 2022, at 10:00 a.m., hybrid, in-person and virtual meeting. In person at Room 252, 6400 Linderson Way [S.W.], Tumwater, WA. To attend virtually by phone or video conference, contact Sierra Crumbaker at SierraC@dor.wa.gov for dial-in/login information.

Date of Intended Adoption: December 28, 2022.

Submit Written Comments to: Michael Hwang, 6400 Linderson Way S.W., Tumwater, WA 98504, email MichaelHw@dor.wa.gov, 360-534-1575, by December 9, 2022.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed new rule seeks to clarify administrative aspects of the excise tax on capital gains such as proper filing procedures and penalties related to this excise tax.

Reasons Supporting Proposal: This rule will provide useful information on filing and payment procedures for the new capital gains excise tax.

Effective January 1, 2022, chapter 82.87 RCW imposes an excise tax on sales or exchanges of long-term capital assets. In March of 2022, the Douglas County superior court ruled in *Quinn v. State of Washington* that the excise tax on capital gains does not meet state constitutional requirements and, therefore, is unconstitutional and invalid. The state has appealed the ruling to the Washington supreme court. While the appeal is pending, the department will continue to provide guidance, such as this rule, to the public regarding the tax as a courtesy. This rule will apply only if the tax is ruled constitutional and valid by the Washington supreme court.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Statute Being Implemented: RCW 82.87.020, 82.87.040, 82.87.050, 82.87.060, 82.87.110, 82.87.120, 82.87.130.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Hwang, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1576; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-531-1615.

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 proposed rule is not a significant legislative rule.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

er than businesses, so the proposed rule does not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2). In addition, the proposed rule does not create any liability for taxes or fees, reporting requirements, recordkeeping requirements, or compliance requirements not already otherwise imposed by statute.

November 2, 2022  
Atif Aziz  
Rules Coordinator

### OTS-4078.3

#### NEW SECTION

**WAC 458-20-300 Capital gains excise tax—Overview and administration.** (1) **Introduction and overview.** Beginning January 1, 2022, Washington law imposes an excise tax on individuals with sales or exchanges of long-term capital assets (capital gains excise tax). See RCW 82.87.040. This rule provides information regarding the administration of the capital gains excise tax and is divided into six subsections as follows: Introduction and overview; returns; extensions; payment of tax; penalties and interest; and general administration.

(a) **Imposition.** The capital gains excise tax is imposed on the sale or exchange of long-term capital assets. The capital gains excise tax is not imposed on any sale or exchange occurring prior to January 1, 2022. A "long-term capital asset" is a capital asset that is held for more than one year. A "capital asset" has the same meaning as provided by section 1221 of the federal Internal Revenue Code and includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under section 1231 or any other provision of the federal Internal Revenue Code.

(b) **Who is taxable?** Only individual natural persons (referred to in this rule as "taxpayer," "you," or "your") are subject to the capital gains excise tax.

(c) **What is the tax rate?** The tax rate is seven percent. The tax is calculated by multiplying a taxpayer's Washington capital gains by the seven percent tax rate.

(d) **Washington capital gains.** Washington capital gains is your federal net long-term capital gain with certain adjustments made under RCW 82.87.020 (1)(a) through (e) and further modified by the deductions in RCW 82.87.060. The adjustments are primarily aimed at removing capital gains and losses allocated to places outside of Washington from your Washington capital gains figure.

(i) "Federal net long-term capital gain" means the net long-term capital gain reportable for federal income tax purposes, determined as if Title 26 U.S.C. Secs. 55 through 59 and 1400Z-1 and 1400Z-2 of the federal Internal Revenue Code did not exist. Title 26 U.S.C. Secs. 55 through 59 relate to the alternative minimum tax and Title 26 U.S.C. Secs. 1400Z-1 and 1400Z-2 relate to opportunity zones.

(ii) The deductions in RCW 82.87.060 are as follows:

(A) A standard deduction. If you are married or a state-registered domestic partner, the total combined standard deduction for both you and your spouse or domestic partner is \$250,000, regardless of

whether you and your spouse or domestic partner file a joint or separate return. In all other cases, the standard deduction is \$250,000 per individual natural person. The \$250,000 deduction amount may be adjusted for inflation every December, beginning in December 2023. See RCW 82.87.150 for additional information.

(B) Amounts that the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(C) Adjusted capital gain derived from the sale or transfer of your interest in a qualified family-owned small business pursuant to RCW 82.87.070.

(D) Charitable donations deductible under RCW 82.87.080. The charitable donation deduction cannot exceed \$100,000. The \$100,000 deduction cap may be adjusted for inflation every December, beginning in December 2023. See RCW 82.87.150 for additional information.

(e) **Exemptions.** Certain sales or exchanges, such as sales of real estate, are exempt from the capital gains excise tax. See RCW 82.87.050 for additional information.

(f) **Examples.** This rule contains examples. These examples identify a number of facts and then state a conclusion. They are provided only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Returns.**

(a) **Filing obligation and due date.** Only taxpayers owing Washington's capital gains excise tax in a taxable year are required to file a capital gains excise tax return with the department.

(i) If you are required to file a capital gains excise tax return, you must file the return with the department on or before the date your federal income tax return is required to be filed for the same taxable year.

(ii) If you owe capital gains excise tax, you are required to file a capital gains excise tax return whether or not you filed a federal income tax return.

(iii) If you did not file a federal income tax return, the due date for your capital gains excise tax return is the date your federal income tax return would have been due.

**Example 1 - Return due date**

**Facts:** The due date for Michael's federal income tax return is April 18, 2023. Michael has a Washington capital gains excise tax liability.

**Result:** The capital gains excise tax return due date is April 18, 2023, which is the date Michael's federal income tax return is due. Michael must file his capital gains excise tax return on or before April 18, 2023, or the return will be late and penalties will apply.

(b) **Separate and joint filers, single filers.** If you are required to file a capital gains excise tax return, your federal income tax filing status may affect how you must file your capital gains excise tax return as follows:

(i) Spouses filing jointly. Spouses who file a joint federal income tax return for the taxable year must file a joint capital gains excise tax return for the same taxable year. Accordingly, if you are married, and file a joint federal income tax return with your spouse, you must file a joint capital gains excise tax return with your spouse.

(ii) Spouses filing separately. If a spouse files a separate federal income tax return for the taxable year, each spouse that owes capital gains excise tax must file a separate capital gains excise tax

return for the same taxable year. Accordingly, if you are married and file a separate federal income tax return from your spouse, you must file a separate capital gains excise tax return.

(iii) State-registered domestic partners. State-registered domestic partners may file a joint capital gains excise tax return even if they filed separate federal income tax returns for the taxable year. Accordingly, if you are a state-registered domestic partner and file a separate federal income tax return from your partner, you may elect either to file a joint or separate capital gains excise tax return.

(iv) Single filers. Any individual that is not married and is not a state-registered domestic partner must file their capital gains excise tax returns as a single individual.

(c) **Required documentation with the capital gains excise tax return.** All taxpayers required to file a capital gains excise tax return for a taxable year must submit, along with the capital gains excise tax return form, all of the following:

(i) A copy of the complete, filed federal individual income tax return, including all supporting schedules and documentation filed with the Internal Revenue Service (IRS), for the taxable year.

(ii) For any claim for exemption under RCW 82.87.050(2), which may exempt the sale or exchange of an interest in a privately held entity directly owning real estate, documentation that substantiates the following:

(A) The fair market value and basis of the real estate held directly by the privately held entity;

(B) The percentage of the ownership interest sold or exchanged in the privately held entity that owns the real estate; and

(C) The methodology established by the privately held entity for allocating gains or losses from the sale of real estate among the owners, partners, or shareholders of the entity.

(d) **Incomplete returns.** A capital gains excise tax return is considered complete only if the return is filed in accordance with the filing requirements described in RCW 82.87.110 and subsection (2) of this rule. If a complete capital gains excise tax return is not filed on or before the due date for the capital gains excise tax return, the return will be late and the late filing penalty may apply. See subsection (5) of this rule for more information.

**Example 2 - Incomplete return**

**Facts:** Jane filed her federal income tax return on April 18, 2023. Jane owes capital gains excise tax and is required to file a capital gains excise tax return. She filed the return on April 18, 2023, but did not provide the department with a copy of her federal income tax return until April 30, 2023.

**Result:** Jane was required to file a complete return by April 18, 2023. Jane did not file a complete return on April 18, 2023, because she failed to include a copy of her federal individual income tax return along with the capital gains excise tax return. Jane's return is late. See subsection (5) of this rule for additional information on the late filing penalty.

(e) **Electronic filing.** All taxpayers must electronically file their capital gains excise tax returns and all required documentation identified in subsection (2)(c) of this rule. Electronic filings must be submitted to the department via the "My DOR" portal at [www.secure.dor.wa.gov](http://www.secure.dor.wa.gov). The department may waive the electronic filing requirement for good cause as provided in RCW 82.32.080. See RCW 82.32.080 and WAC 458-20-22802 for additional information regarding electronic filing and the good cause waiver.

(f) **Amended returns.**

(i) **Amended return required.** If you or the IRS make any changes to your federal income tax return for any reason, and the changes affect the reported capital gains or the capital gains excise tax liability, you must file an amended capital gains excise tax return reflecting all changes made to the federal income tax return. You must also file an amended capital gains excise tax return if the original capital gains excise tax return needs to be corrected for errors identified after the due date for the original capital gains excise tax return, including, for example, situations where the statute of limitations for assessment of federal tax for a particular tax year is closed but the Washington nonclaim period remains open.

(ii) **Assessments and penalties.** The amendment of a capital gains excise tax return is not subject to a specific deadline. However, if the department finds that your failure to file an amended capital gains excise tax return shows evasion or misrepresentation of a material fact, the department can make assessments or corrections of assessments outside of the usual nonclaim period and impose penalties and interest at any time. See subsection (6) of this rule for more information.

(iii) **Filing and payment requirements for amended returns.** The documentation requirements described in subsection (2) of this rule apply to amended returns. This means, for instance, a copy of the complete, filed amended federal individual income tax return and all supporting amended schedules and documentation must be filed along with the amended return. If an amended capital gains excise tax return is filed and there is no amendment made to the federal tax return, other documentation supporting the changes must be submitted with the amended capital gains excise tax return. You must file your amended capital gains excise tax return electronically and electronically pay any additional tax due unless granted a waiver from the electronic filing/payment requirements by the department.

(3) **Extensions.**

(a) **Extension period; timely payment still required.** If a taxpayer obtains an extension of time for filing the federal income tax return for the taxable year and provides the department proof of the extension, the capital gains excise tax return is considered due on or before the extended due date for the federal income tax return. However, an extension for filing the capital gains excise tax return does not extend the due date for paying the capital gains excise tax.

(b) **Extension filing; certification.** You must submit an extension request electronically with the department on or before the original due date via the My DOR portal at [secure.dor.wa.gov](https://secure.dor.wa.gov). During the submission process, you will certify that federal Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return* or Form 2350, *Application for Extension of Time to File U.S. Income Tax Return*, was properly filed for the tax year. You must attach a copy of the properly filed federal Form 4868 or Form 2350 when filing the capital gains excise tax return.

(4) **Payment of tax.**

(a) **Due date.** If you owe the capital gains excise tax, you must remit the tax to the department on or before the date your federal income tax return is required to be filed without regard to any extension granted to you for the filing of your federal income tax return. The extension of time for filing the federal income tax return or capital gains excise tax return does not extend the due date for paying your capital gains excise tax. If you pay your capital gains excise

tax late, the late payment penalty and interest may apply. See subsection (5) of this rule for more information.

**Example 3 - Late payment - No federal extension**

**Facts:** Jeannette filed her federal income tax return on April 18, 2023. Jeannette files a capital gains excise tax return on April 18, 2023. She later remits her capital gains excise tax to the department on April 20, 2023.

**Result:** Jeannette was required to pay the capital gains excise tax on April 18, 2023, when her federal income tax return was due. Jeannette paid the capital gains excise tax late and is subject to penalties and interest.

**Example 4 - Late payment - Federal income tax return extension**

**Facts:** Gil requested a federal income tax return extension on April 12, 2023, and received an automatic extension of time to file his federal tax return to October 16, 2023. Gil properly submits an extension request certification to the department before April 18, 2023, the original due date for the federal tax return and capital gains excise tax return. Gil files a capital gains excise tax return and pays his capital gains excise tax on October 13, 2023.

**Result:** Gil paid his capital gains excise tax late and is subject to penalties and interest with respect to the late payment. While Gil extended the date for filing the capital gains excise tax return, the due date for the payment of the capital gains excise tax remained April 18, 2023.

(b) **Electronic payment.** Capital gains excise tax must be paid by electronic funds transfer or other form of department authorized electronic payment, such as by credit card. The department may waive the electronic payment requirement for good cause. See RCW 82.32.080 and WAC 458-20-22802 for additional information regarding electronic payment requirements and the good cause waiver.

(c) **Joint and several liability.** The capital gains excise tax liability of each spouse or state-registered domestic partner filing a capital gains excise tax return is joint and several unless one of the spouses is relieved of liability for federal tax purposes as provided under section 6015 of the federal Internal Revenue Code or the department determines that the domestic partner would qualify for relief under the same parameters provided in section 6015.

(5) **Penalties and interest**

(a) **Late filing penalty.** If you do not file a complete capital gains excise tax return by the due date, the department will assess a late filing penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. See RCW 82.87.110. The total late filing penalty may not exceed 25 percent of the tax due for the taxable year covered by the late return.

(b) **Late payment penalty.** If you do not remit your capital gains excise tax on or before the due date for payment of the capital gains excise tax, you are subject to the late payment penalty. If payment is not received by the department by the due date, the department will assess a penalty of nine percent of the amount of the tax due; if the tax is not received on or before the last day of the month following the due date, the department will assess a total penalty of 19 percent of the amount of the tax due; and if the tax is not received on or before the last day of the second month following the due date, the department will assess a total penalty of 29 percent of the amount of the tax due. See RCW 82.32.090(1) and WAC 458-20-228 for more information regarding late payment penalties.

(c) **Other penalties.**

(i) Other penalties imposed under chapter 82.32 RCW may apply. These penalties include the penalties for substantial underpayment of tax, disregard of specific written instructions, and intent to evade tax. See RCW 82.32.090 and WAC 458-20-228 for additional information.

(ii) Any taxpayer who knowingly attempts to evade payment of the capital gains excise tax is guilty of a class C felony as provided in chapter 9A.20 RCW. Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information required under the capital gains excise tax, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW. RCW 82.87.140.

(d) **Amended returns.** The penalties described in this subsection may apply to amended capital gains excise tax returns, except the department will not assess late return or late payment penalties on increased amounts of tax due as a result of the amendment if the original capital gains excise tax return and tax due were timely filed and paid.

(e) **Penalty waivers.**

(i) The department will waive the late filing penalty only if the department determines that:

(A) The taxpayer's failure to timely file the return was due to circumstances beyond their control; or

(B) The taxpayer has not been delinquent in filing any capital gains excise tax returns due during the preceding five calendar years.

(ii) The department will waive the late payment (RCW 82.32.090(1)) and substantial underpayment penalties (RCW 82.32.090(2)), if the department determines that the taxpayer's failure to timely pay was due to circumstances beyond their control. See RCW 82.32.105 and WAC 458-20-228 for additional information regarding waivers due to circumstances beyond the taxpayer's control.

(f) **Interest.**

(i) If you do not pay your capital gains excise tax by the due date described in subsection (4) of this rule, you will be assessed interest on the unpaid amounts. See RCW 82.32.050 and WAC 458-20-228 for additional information on interest assessed on underpayments and interest waivers.

(ii) If you have paid more tax than is properly due, you will receive interest for your overpayment. See RCW 82.32.060 and WAC 458-20-229 for information on interest on tax overpayments.

(6) **General administration**

(a) **Application of chapter 82.32 RCW.** The department administers the capital gains excise tax in accordance with chapter 82.32 RCW except as otherwise provided by law and to the extent not inconsistent with chapter 82.87 RCW.

(b) **Preserving accurate and complete records.** You have the burden of proving any claimed deductions, exemptions, and credits. Washington law requires you to keep accurate and complete records and timely respond to communications from the department. You must preserve records that substantiate the amounts of all deductions, exemptions, or credits claimed, as well as any documentation that substantiates your allocation of capital gains and losses. Claims for exemptions, deductions, and credits from the capital gains excise tax may require additional documents to be submitted to the department at the department's request. See RCW 82.32.070 and WAC 458-20-254 for additional information on recordkeeping requirements.

(c) **Refunds.** If you discover that you have overpaid taxes, penalties, or interest, you may file an amended capital gains excise tax

return or apply for a refund or credit. The provisions under WAC 458-20-229 apply to refunds of overpaid capital gains excise tax.

(d) **Informal administrative reviews.** If you disagree with the department's assessment of tax, penalties, or interest; a department letter ruling; or the department's denial of a refund, you may seek an informal review of that action by submitting a petition for review with the department's administrative review and hearings division. The petition must be filed within 30 days of the department action. See WAC 458-20-100 for additional information.

(e) **Nonclaim period.** The nonclaim period provided under RCW 82.32.050 and 82.32.060 for deficient tax or penalty payments and excess payment of tax, penalty, or interest, respectively, apply to the capital gains excise tax. However, there is no limitation for the period in which an assessment or correction of an assessment can be made upon a showing of evasion or of misrepresentation of a material fact. See RCW 82.32.050 and WAC 458-20-230.

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**WSR 22-22-102**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed November 2, 2022, 9:49 a.m.]

Continuance of WSR 22-17-073.

Preproposal statement of inquiry was filed as WSR 22-03-046.

Title of Rule and Other Identifying Information: This notice is to announce a change in the previously scheduled public hearing on this proposed rule making, from October 25, 2022, to November 22, 2022. The previously scheduled public hearing on October 25, 2022, was not held due to a service-wide network outage.

The department is amending WAC 388-71-0837, 388-71-0839, 388-71-0841, 388-71-0846, 388-71-0850, 388-71-0855, 388-71-0860, 388-71-0875, 388-71-0906, 388-71-0911, 388-71-0916, 388-71-0932, 388-71-0936, 388-71-0941, 388-71-0946, 388-71-0970, 388-71-0971, 388-71-0973, 388-71-0980, 388-71-0985, 388-71-0990, 388-71-0991, 388-71-1001, 388-71-1026, 388-71-1031, 388-71-1045, 388-71-1050, 388-71-1051, 388-71-1055, 388-71-1060, 388-71-1064, 388-71-1076, 388-71-1091, 388-71-1096, 388-71-1106, 388-71-1111, 388-71-1120, 388-71-1125, 388-71-1130, 388-112A-0105, 388-112A-0110, 388-112A-0115, 388-112A-0120, 388-112A-0125, 388-112A-0130, 388-112A-0200, 388-112A-0210, 388-112A-0220, 388-112A-0310, 388-112A-0320, 388-112A-0330, 388-112A-0520, 388-112A-0550, 388-112A-0560, 388-112A-0580, 388-112A-0610, 388-112A-0611, 388-112A-0612, 388-112A-0920, 388-112A-0940, 388-112A-0950, 388-112A-1010, 388-112A-1020, 388-112A-1230, 388-112A-1240, 388-112A-1250, 388-112A-1270, 388-112A-1285, 388-112A-1292, 388-112A-1300, and 388-112A-1310.

Repealing WAC 388-71-058329, 388-71-05833, 388-71-05834, 388-71-0921, 388-71-0931, 388-71-0951, 388-71-1006, 388-71-1021, 388-71-1083, 388-112A-0240, 388-112A-0350, 388-112A-0480, 388-112A-0530, 388-112A-0540, 388-112A-0585, 388-112A-0620, and 388-112A-0840.

New WAC 388-71-0958 Is there a challenge test for nurse delegation core or specialized diabetes training?, 388-71-0961 What knowledge and skills must nurse delegation core training include?, 388-71-0962 What knowledge and skills must specialized diabetes nurse delegation training include?, 388-71-1067 What are the minimum qualifications for community instructors for mental health specialty training?, 388-71-1068 What are the minimum qualifications for community instructors for dementia specialty training?, 388-71-1069 What are the minimum qualifications for community instructors to teach expanded specialty trainings?, and 388-112A-0118 What documentation is required for completion of each training?

Hearing Location(s): On November 22, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than November 22, 2022.

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

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on October 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Training requirements for all long-term care workers are regulated by the same policies. Long-term care workers who work in home environments are regulated under chapter 388-71 WAC, while workers in assisted living facilities, enhanced services facilities, and adult family homes are regulated under chapter 388-112A WAC. As the result of many years of amendments and additions to rules that were not done in concert between the two chapters, the language between chapter 388-71 and 388-112A WAC has diverged, resulting in significant differences. These differences cause unnecessary confusion. The modifications contained in this proposal will not change policy or practice, but will reconcile the differences, update language, and create more current and uniform policies for long-term care workers. Amendments fall under the following categories: Changing numbers over 10 to numbers rather than words; adding rules to chapter 388-71 WAC that are already in place in chapter 388-112A WAC but should be in both training sections; moving rules to new, more logical locations; clarifying language suggested by stakeholders, making wording between chapters more consistent; gender equity changes; consolidating several redundant rules into a single rule; changing "70-hour long-term care basic training" to "70-hour home care aide basic training"; correction of typographical and other unintended errors; and anticipation of a future department of health rule change related to training and the date of hire.

Reasons Supporting Proposal: See purpose above.

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

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

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: David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2366.

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

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

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).

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

Explanation of exemptions: Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

October 31, 2022  
Katherine I. Vasquez  
Rules Coordinator