

**WSR 24-04-086**  
**PROPOSED RULES**  
**HEALTH CARE**  
**FACILITIES AUTHORITY**  
[Filed February 5, 2024, 4:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-01-080.

Title of Rule and Other Identifying Information: Chapters 247-02, 247-12, and 247-16 WAC.

Hearing Location(s): On March 20, 2024, at 10 a.m., via Zoom.  
Contact Donna Murr for Zoom link information.

Date of Intended Adoption: March 20, 2024.

Submit Written Comments to: Donna Murr, 410 11th Avenue S.E., Suite 201, Olympia, WA 98501, email donnam@whcfa.wa.gov, by March 20, 2024.

Assistance for Persons with Disabilities: Contact Donna Murr, phone 360-586-4370, email donnam@whcfa.wa.gov, by March 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule changes are administrative in nature and designed to promote a more effective and efficient means of participating at health care facilities authority (HCFA) meetings, as well as a more efficient and effective processing of applications for financial assistance.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 70.37 RCW.

Statute Being Implemented: Chapter 70.37 RCW.

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

Name of Proponent: HCFA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Donna Murr, 410 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-586-4370.

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. Proposed rules are administrative in nature and do not affect any operating costs of HCFA of [or] any organization utilizing services of HCFA.

February 5, 2024  
Donna A. Murr  
Executive Director

**OTS-5078.1**

AMENDATORY SECTION (Amending WSR 79-10-101, filed 9/26/79)

**WAC 247-02-010 Purpose.** The purpose of this chapter shall be to ~~((ensure compliance by))~~ provide guidance on the organization, operation, and procedures of the Washington health care facilities authority

ty ((with the provisions of chapter 42.17 RCW (Initiative 276), and chapter 34.04 RCW)).

AMENDATORY SECTION (Amending WSR 79-10-101, filed 9/26/79)

**WAC 247-02-030 Definitions.** (1) "Act" means ((chapter 147, Laws of 1974 1st ex. sess., and)) chapter 70.37 RCW.

(2) "Washington health care facilities authority" and "authority" each mean the corporate and politic public body created by the act and, unless the context indicates otherwise, also refer to the staff and employees of the authority.

The terms defined in the act shall have the same meaning when used in Title 247 WAC.

AMENDATORY SECTION (Amending WSR 81-24-038, filed 11/25/81)

**WAC 247-02-040 Description of organization.** (1) The authority is a public entity established under the provisions of chapter 70.37 RCW, which exercises essential governmental functions.

(2) ((Members. The authority consists of the governor; the lieutenant governor; the insurance commissioner; the chairman of the Washington state hospital commission; and one public member appointed by the governor on the basis of his or her interest or expertise in health care delivery, and confirmed by the senate for a term of four years. If the public office of any of the first four mentioned members is abolished, the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof.

~~(3))~~ Officers. The officers of the authority shall be a ((chairman)) chair, who shall be the governor, and a secretary. The secretary shall ((hold office for two years, or)) be elected by a majority vote of the board members and shall continue to hold that office until his or her successor is later elected((, and shall be elected by a majority vote of the members from among themselves)). Whenever a vacancy occurs in the office of secretary, the members of the authority shall elect a successor who shall serve out the remaining term.

((4)) (3) Authority staff: The staff of the authority shall consist of an executive director and such other employees as are determined by the authority as necessary to fulfill its responsibilities and duties. The executive director shall be the chief administrative officer of the authority and subject to its direction. All other staff shall be under his or her supervision and direction. The executive director shall keep a record of the proceedings of the authority and, when required by the authority, shall sign notes, contracts and other instruments. The executive director shall have custody of and be responsible for all moneys and securities of the authority and shall deposit all such moneys forthwith in such banks as the authority may designate from time to time.

((5)) (4) Administrative office: The administrative office of the authority shall be located at ((504 E. 14th, Suite 130)) 410 11th Ave. S.E., Suite 201, Olympia, Washington 98504, which office shall be open each day for the transaction of business from 8:00 a.m. to 5:00 p.m. (Saturdays, Sundays and legal holidays excepted)((, and except for

~~business relating to public records, which is governed by WAC 247-12-050~~)).

((6)) (5) Address for communications: All communications with the authority, including but not limited to the submission of materials pertaining to its operations and these rules, requests for copies of the authority's decisions and other matters, shall be addressed as follows: Washington Health Care Facilities Authority, (504 E. 14th, Suite 130) 410 11th Ave. S.E., Suite 201, Olympia, Washington 98504.

AMENDATORY SECTION (Amending WSR 05-11-048, filed 5/13/05, effective 5/13/05)

**WAC 247-02-050 Operations and procedures.** (1) ((Uniform)) Model rules of procedure ((rules)): Practice and procedure in and before the authority are governed by the ((uniform procedural rules)) model rules of procedure codified in ((the Washington Administrative Code, WAC 1-08-005 through 1-08-590)) chapter 10-08 WAC, as now or hereafter amended, which rules the authority adopts as its own, subject to any additional rules the authority may add from time to time. The authority reserves the right to make whatever determination is fair and equitable should any question not covered by its rules come before the authority, said determination to be in accordance with the spirit and intent of the law.

(2) Authority meetings: The meetings of the authority shall all be "special meetings" as that designation is applied in chapter 42.30 RCW. They may be called at any time and place by the ((chairman)) chair or a majority of the members of the authority. ((At least ten days' notice of all special meetings shall be given by delivering personally or by mail to each member a written notice specifying the time and place of the meeting and a copy of the agenda prepared by the executive director in consultation with the chairman, and by giving)) The authority shall provide to the members and the public such notice ((to the public)) as may be required by law. ((If an emergency is deemed to exist, the chairman may shorten the notice period to not less than twenty-four hours.)) An executive session may be called by the ((chairman)) chair or by a majority of all members of the authority ((to consider the appointment, employment or dismissal of an officer or employee, and such other matters as are permitted by RCW 42.30.110)) as permitted by law.

(3) Quorum: Three members shall constitute a quorum, and the act of a majority of the members present at any meeting, if there is a quorum, shall be deemed the act of the authority except as specified hereafter in WAC 247-02-050(7).

(4) ((Chairman's)) Chair's voting rights: The ((chairman)) chair shall have the right to vote on all matters before the authority, just as any other authority member.

(5) Minutes of meetings: Minutes shall be kept of the proceedings of the authority.

(6) Rules of order: The authority shall generally follow *Robert's Rules of Order* ((r)) Newly Revised, in conducting its business meetings.

(7) Form of authority action: The authority may act on the basis of a motion except when authorizing issuance of bonds pursuant to WAC 247-16-070 and when otherwise taking official and formal action with respect to the creation of special funds and the issuance and sale of

bonds for a project of a participant, in which case the authority shall act by resolution. Such resolutions shall be adopted upon the affirmative vote of a majority of the members of the authority and shall be signed by a majority of the members of the authority. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting. All bonds shall be executed in the manner provided in RCW 70.37.050.

(8) Public participation is welcomed in the meetings of the authority ~~((shall be as follows:))~~.

~~(a) ((Any person or organization wishing to make a formal presentation at a regularly scheduled meeting of the authority shall so notify the executive director in writing at least forty-eight hours prior to the time of the meeting.~~

~~(i) Such notification shall contain the name of the person, association, corporation or organization that desires to make a presentation; the address of such person and, if applicable, the address of the entity to be represented in the presentation; and the topic to be presented or discussed.~~

~~(ii) Permission to make a presentation to the authority shall be granted by the executive director as authorized by the authority.~~

~~(iii) Confirmation of permission to make a presentation to the authority shall be made, if at all possible, by the authority staff prior to the meeting of the authority and shall include the date and time of the meeting and time set for the formal presentation.)~~ The authority's usual practice shall be to leave time in the agenda of authority meetings for public comment.

(b) The ~~((chairman))~~ chair of the authority shall ~~((have the discretion to))~~ recognize anyone in the audience who indicates ~~((in writing))~~ at the time of the meeting a desire to speak at such meeting, provided that remarks by any individual person ~~((shall be))~~ are limited to five minutes unless a time extension is granted by the ~~((chairman))~~ chair.

## OTS-5079.1

### NEW SECTION

**WAC 247-12-015 Authority and purpose.** (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying non-exempt "public records" in accordance with published rules. The act defines "public record" at RCW 42.56.010(3) to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.010(3) excludes from the definition of "public record" the records of volunteers that are not otherwise required to be retained by the agency and which are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission or internship; and do not have a supervisory role or delegated authority. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures the Washington health care facilities authority (authority) will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the authority and establish processes for both requestors and authority staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the authority will be guided by the provisions of the act describing its purposes and interpretation.

#### NEW SECTION

**WAC 247-12-025 Agency description—Contact information—Public records officer.** (1) The Washington health care facilities authority (authority) acts as a conduit to allow nonprofit health care providers access to the tax-exempt municipal bond market. The authority's central office is located at 410 11th Avenue S.E., Suite 201, Olympia, Washington 98501.

(2) Any person wishing to request access to public records of the authority, or seeking assistance in making such a request should contact the public records officer of the authority:

Public Records Officer  
Washington Health Care Facilities Authority  
410 11th Avenue S.E.  
Olympia, WA 98501  
Telephone: 360-753-6185  
Fax: 360-586-9168  
E-mail: whcfarecords@whcfa.wa.gov

Information is also available at the authority's website at <http://www.whcfa.wa.gov>.

(3) The public records officer will oversee compliance with the act but another authority staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the authority will provide the "fullest assistance" to requestors; create and maintain for use by the public and authority officials an index to public records of the authority; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the authority.

#### NEW SECTION

**WAC 247-12-035 Availability of public records.** (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the Washington health care facilities authority (authority), Monday through Friday, 8:00 a.m. to

5:00 p.m., excluding legal holidays. Records must be inspected at the offices of the authority. Many public records are also available for inspection and copying on the authority's website at any time, at no cost.

(2) **Organization of records.** The authority will maintain its records in a reasonably organized manner. The authority will take reasonable actions to protect records from damage and disorganization. A requestor shall not take authority records from authority offices without the permission of the public records officer or designee. A variety of records is available on the authority's website at <http://www.whcfa.wa.gov>. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the authority should make the request in writing on the authority's request form or through an online portal, or by letter, fax, or email addressed to the public records officer at the email address publicly designated by the authority, or by submitting the request in person at Washington health care facilities authority at 410 11th Avenue S.E., Suite 201, Olympia, Washington 98501 and include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to RCW 42.56.120, charges for copies are provided in a fee schedule attached hereto; available at 410 11th Avenue S.E., Suite 201, Olympia, Washington 98501 and online at <http://www.whcfa.wa.gov>.

(c) A records request form is available for use by requestors at the office of the public records officer and online at <http://www.whcfa.wa.gov>.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

(e) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

NEW SECTION

**WAC 247-12-045 Processing of public records requests—General.**

(1) **Providing "fullest assistance."** The Washington health care facilities authority (authority) is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide

"fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records.

(3) **Acknowledging receipt of request.** Following the initial evaluation of the request under subsection (2) of this section, and within five business days<sup>1</sup> of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) If copies are available on the authority's internet website, provide an internet address and link on the website to specific records requested;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment are agreed upon, send the copies to the requestor;

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available (the public records officer or designee may revise the estimate of when records will be available); or

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the authority will require to respond to the request if it is not clarified.

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

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

(d) Deny the request.

(4) **Consequences of failure to respond.** If the authority does not respond in writing within five business days of receipt of the request for disclosure, the requestor should contact the public records officer to determine the reason for the failure to respond.

(5) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the authority believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) **Inspection of records.**

(a) Consistent with other demands, the authority shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within 30 days of the authority's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the 30-day period or make other arrangements, the authority may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(8) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying. Where the authority charges for copies, the requestor must pay for the copies.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the authority has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the authority has closed the request.

(12) **Later discovered documents.** If, after the authority has informed the requestor that it has provided all available records, the authority becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

Note: <sup>1</sup>In calculating the five business days, the following are not counted: The day the agency receives the request, Saturdays, Sundays, and holidays. RCW 1.12.040. See also WAC 44-14-03006.



NEW SECTION

**WAC 247-12-055 Processing of public records requests—Electronic records.** (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the Washington health care facilities authority (authority) and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by RCW 42.56.120, 42.56.130, and WAC 247-12-070. The fee schedule is available at 410 11th Avenue S.E., Suite 201, Olympia, Washington 98501 and <http://www.whcfa.wa.gov>.

(3) **Customized electronic access services.** While not required, and with the consent of the requestor, the authority may decide to provide customized electronic access services and assess charges under RCW 42.56.120 (2) (f). A customized service charge applies only if the authority estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The authority may charge a fee consistent with RCW 42.56.120(3) for such customized access. The fee schedule is attached hereto; available at 410 11th Avenue S.E., Suite 201, Olympia, Washington 98501 and online at <http://www.whcfa.wa.gov>.

NEW SECTION

**WAC 247-12-065 Exemptions.** (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by Washington health care facilities authority (authority) for inspection and copying:

- Records protected under the attorney-client privilege. (RCW 5.60.060 (2) (a)).
- Certain confidential personal information maintained on borrowers or applicants. See RCW 42.56.230(5) (exempting financial information from disclosure).
- Lists of individuals to be used for commercial purposes (RCW 42.56.070(8)).
- Certain confidential personal information maintained on employees, appointees, or elected officials to the extent disclosure violates the individual's right to privacy (RCW 42.56.230(3)).
- Records relevant to a controversy and protected under the work product doctrine (RCW 42.56.290).

(2) The authority is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

**WAC 247-12-075 Costs of providing copies of public records.** (1) **Inspection.** There is no fee for inspecting public records, including inspecting records on the Washington health care facilities authority (authority) website.

(2) **Statutory default costs.** The authority is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons: The authority does not have the resources to conduct a study to determine actual copying costs for all its records; to conduct such a study would interfere with other essential agency functions; and, through the legislative process, the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act including RCW 42.56.120 and other laws. Therefore, in order to implement a fee schedule consistent with the Public Records Act, it is more cost efficient, expeditious and in the public interest for the authority to adopt the state legislature's approved fees and costs for most of the authority records, as authorized in RCW 42.56.120 and as published in the agency's fee schedule.

(3) **Fee schedule.** The fee schedule is attached hereto; available at 410 11th Avenue S.E., Suite 201, Olympia, Washington 98501 and online at <http://www.whcfa.wa.gov>.

<b>Washington Health Care Facilities Authority Public Records Fee Schedule Per the State of Washington's Public Records Act, RCW 42.56.120</b>	
<b>Type of Record</b>	<b>Fee</b>
Photocopy of standard sized (8 1/2 x 11) paper records, or printed paper copies of electronic records.	15 cents per page (each side is one page)
Digital storage media or devices; any container or envelope used to mail copies; postage or delivery charges.	Actual cost
Nonstandard (oversized copies, photographs, etc.)	Actual cost
Records for which other costs are authorized pursuant to laws outside chapter 42.56 RCW. RCW 42.56.130.	Cost varies – per other statutes
Records sent to an outside vendor due to their unusual size or format, or other factors making copying by office unfeasible. Mailing/delivery and container costs also apply.	Actual cost
Data compilations prepared or accessed as a customized service. Cost is in addition to above fees for copies, including mailing/delivery and container costs. RCW 42.56.120(3).	Actual cost
Electronic transmittal of files	5 cents for every four files
Electronic transmittal of records	10 cents per gigabyte
Scanned paper records	10 cents per page (each image is one page)
Records on authority website	No charge
Records inspected in authority offices	No charge
Any other record not described above	Actual cost
<b>Guidelines for Waiving Fees and Arranging for Payment of Public Records</b>	
The authority fee schedule applies to all public records made under chapter 42.56 RCW. Fees are automatically waived when the total response is less than \$50. The public records officer will produce an invoice and a deadline for payment. Payment may be made by check or money order payable to the Washington health care facilities authority. The authority has no ability to accept credit or debit card payments.	

(4) **Processing payments.** Before beginning to make the copies or processing a customized service, the public records officer or designee may require a deposit of up to 10 percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The authority will not charge sales tax when it makes copies of public records.

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

(6) **Payment.** Payment may be made by check or money order to the authority.

(7) **Fee waivers.**

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and the total cost of the entire request is less than \$50; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments; or

(iii) The records responsive to an entire request are a combination of paper copies and digital copies.

(b) If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

#### NEW SECTION

**WAC 247-12-085 Review of denials of public records.** (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer or designee shall promptly provide the petition and any other relevant information to the agency executive director. The authority will, within two business days following receipt of the petition for review, respond with an estimate of time to consider the matter. Following such review, the executive director will either affirm, reverse, or amend the denial.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 247-12-010	Purpose.
WAC 247-12-020	Definitions.
WAC 247-12-030	Public records available.
WAC 247-12-040	Public records officer.
WAC 247-12-050	Office hours.
WAC 247-12-060	Requests for public records.
WAC 247-12-070	Copying.
WAC 247-12-080	Exemptions and denials of requested public records.
WAC 247-12-090	Review of denials of public records requests.
WAC 247-12-100	Protection of public records.
WAC 247-12-101	Records index.

**OTS-5080.1**

AMENDATORY SECTION (Amending WSR 81-24-038, filed 11/25/81)

**WAC 247-16-010 Purpose.** The purpose of this chapter shall be to set forth the procedures pursuant to which the authority (~~determines those~~) receives and acts on requests for the providing of bonds for the financing of health care facilities (~~to which the authority will give financial assistance~~).

AMENDATORY SECTION (Amending WSR 79-10-101, filed 9/26/79)

**WAC 247-16-020 Definitions.** (1) "Applicant" means a participant which submits an application to the authority.

(2) "Application" means a formal request to the authority for the providing of bonds for the financing of a health care facility (~~by the authority~~), in a format and containing such information as the authority shall specify in these rules or in the application instructions (~~and which is signed and sworn to by a representative designated by formal action of the applicant's governing board or equivalent~~).

AMENDATORY SECTION (Amending WSR 81-24-038, filed 11/25/81)

**WAC 247-16-030 Applications for financial assistance.** (~~Because the needs of health care facilities in the state vary substantially, no application forms shall be provided by the authority. However, an~~

~~applicant should furnish the following information to the authority, where applicable, with its request for financial assistance, and such other information as is deemed pertinent by the applicant or the executive director of the authority:))~~ In order to meet the unique needs of different types of borrowers, and/or unique financing programs, the authority will develop and modify from time to time, as necessary, the application forms for financial assistance. Any such application shall contain at least the following information:

(1) Identification of applicant:

(a) Legal name and address of applicant;

(b) Name((s)), title((s)) and telephone number((s)) of ~~((chief executive officer, chief financial officer and))~~ person assigned responsibility for liaison with the authority;

(c) ~~((Names, addresses and telephone numbers of applicant's legal counsel, outside accounting firm and financial consultant or investment banking firm (if any);~~

~~((d))~~ Description of applicant's legal structure (e.g., private nonprofit corporation, public district hospital) ~~((. If private, describe type and ownership of stock, if any; how assets held and by whom; and attach copies of articles of incorporation or similar documentation));~~

~~((e))~~ (d) If applicant is a private ((hospital)) entity, attach copies of articles of incorporation or other similar documentation, and a copy of IRS determination of 501 (c)(3) status;

~~((f))~~ (e) Religious or other group affiliation, if any.

(2) Project for which financial assistance is sought (if applicable):

(a) The maximum principal amount ((and)) requested ((terms of repayment for financing sought)) and, if the requested financial assistance will finance multiple projects at separate sites, a breakdown of the maximum principal amount to finance each separate project;

(b) General description of project to be ~~((accomplished with authority financial assistance))~~ financed or refinanced;

(c) Current status of planning for project and dates proposed for (i) completion of drawings for project, if ~~((necessary))~~ applicable (attach copies if completed); (ii) filing of environmental impact statement, if ~~((necessary))~~ applicable; (iii) entry into construction contract; and (iv) completion or occupancy;

(d) ~~((Recommendations of the appropriate regional health systems agency, and of the state hospital commission, or the current status of their respective reviews;~~

~~((e))~~ Current status of certificate of need for project, if required. If certificate has been issued, attach copy;

~~((f))~~ (e) Cost of project (including simple breakdown of costs of general construction, site work, utilities, equipment, land acquisition, architects' and other fees, contingency, interim interest, other);

~~((g) Sources of funds for payment of project costs and dates of expected receipt (assistance from authority, interim financing, grants, funds on hand, interest and profit on interim investment of construction funds, other);~~

~~((h) Amount of projected revenues to be derived from project, the sources of such revenues, when expected to begin, and a three-year projection;~~

~~((i))~~ (f) Feasibility studies on project, if any (attach copy if one has been completed);

~~((j))~~ (g) Proposed security for authority-issued bonds((;

~~(k) Contracts or preliminary arrangements with planners, architects, consultants, investment banking firm, if any, regarding project.~~

~~(3) Debt to be refinanced with authority assistance (if applicable):~~

~~(a) Amount, date, maturity or maturities, interest rate or rates, prepayment penalties, if any, debt service and form of applicant's existing debt to be refinanced;~~

~~(b) Source of revenue for payment of existing debt, security for debt and rating, if any, assigned to debt instruments at time of debt issuance;~~

~~(c) Most recent decision and order of the state hospital commission on its annual review of the applicant's budget;~~

~~(d) Holder of debt (if ascertainable);~~

~~(e) Any negative debt service payment history;~~

~~(f) Proposed security for new authority-issued debt;~~

~~(g) Proposed date schedule for accomplishing debt refinancing)).~~

~~((4)) (3) Finances of applicant:~~

~~(a) Audited (if audited) financial statements for past three years;~~

~~(b) Latest current financial statement;~~

~~(c) Current year's budget of revenues, expenses and capital expenditures (;~~

~~(d) Projection of revenues, expenses, capital expenditures for next three-five years, including revenues and expenses of proposed project (if applicable);~~

~~(e) Description of long-term debts of applicant, if not already given above, including date incurred, by whom held, debt service schedule, interest rate, form of debt, source of revenues for repayment, security for repayment;~~

~~(f) Sources of hospital revenues (private patient, medicare, medicaid, welfare, Blue Cross, grants, etc.) and approximate dollar volumes and percentages of total revenues for each source in last three years)).~~

~~((5)) (4) General:~~

~~(a) Pending or threatened litigation or administrative actions with potential of material adverse effect on applicant;~~

~~(b) Brief description of existing ((medical)) health care facilities, including number of beds, number of ((medical)) health care and other staff, categories of ((medical)) health care services offered, and laboratory and research facilities, if any;~~

~~(c) ((Brief description of hospital expansion plans, if any, in next ten years;~~

~~(d) Brief summary of statistics (last three years, if available) on percentage of bed occupancy and types and numbers of patients cared for (inpatient, outpatient, welfare, etc.);~~

~~(e) Estimate of aggregate savings over the life of the proposed financing to be realized by applicant through authority financing by tax-exempt bonds as compared to financing through taxable obligations. Specify interest assumptions on which savings calculations based;~~

~~(f)) Describe means applicant proposes to use to ensure that savings from tax-exempt financing ((are passed on to patients of applicant)) the estimated financial benefits resulting from financing its project through the authority, as opposed to obtaining financing other than through the authority, will be used for building, providing and utilization of modern, well-equipped and reasonably priced health care facilities in a manner that will minimize the capital costs of~~

construction, financing and use thereof and thereby the costs to the public for the use of such facilities, and to contribute to improving the quality of health care;

(d) The application shall contain an appropriate legal commitment to indemnify the authority against any expenses or costs incurred by it in connection with the processing of the applicant's application and the completion of any project or plan and system subsequently approved and undertaken by the authority. (See WAC 247-16-040 regarding authority charges);

(e) The authority or the executive director may require the submission of additional information depending on factors such as the scope, size, and complexity of project;

(f) Application forms are available from the authority and are available on the authority website.

AMENDATORY SECTION (Amending WSR 81-24-038, filed 11/25/81)

**WAC 247-16-040 ((Fees)) Charges.** (1) Authorization to assess charges ((fees)): The authority, pursuant to RCW 70.37.090, shall require applicants to pay ((fees and)) charges to the authority to provide it with funds for investigations, financial feasibility studies, consultants, counsel, expenses of issuance and sale of bonds, and other charges for services provided by the authority in connection with projects undertaken, as well as the operating and administrative expenses of the authority. ((In accordance with this authorization, an applicant shall pay to the authority such fees and charges as are necessary to meet any and all expenses incurred by the authority in connection with the processing of the application of the applicant, together with an annual service fee to defray expenses of the authority in administering and servicing the financing provided to the applicant and other allocable expenses of the authority. The authority shall assess an annual fee of one-tenth of one percent of the outstanding and unredeemed bonds of each applicant. The initial annual fee shall be paid to the authority on the date of closing of each tax exempt note or bond issue and in every anniversary date thereafter: Provided, however, That the authority by an adopted motion may set a different fee schedule and may waive all or any part of the annual or application fee.

(2) Fee obligations of the applicants: An applicant shall submit with its application an initial remittance of \$7,500.00, to be credited against the fees and charges imposed or to be imposed by the authority on such applicant pursuant to this section in connection with the processing of an application. The applicant shall pay such fees and charges as they are billed to it from time to time by the authority. These expenses may be reimbursed to the applicants from the bond proceeds if financing is consummated. In addition, the application shall contain an appropriate legal commitment to indemnify the authority against any expenses or costs incurred by it in connection with the processing of the applicant's application and the completion of any project or plan and system subsequently approved and undertaken by the authority, as well as to pay the authority an annual service fee to defray expenses of the authority in administering and servicing the financing provided to the applicant and other allocable expenses of the authority, which annual fee shall be imposed so long as financing is being provided by the authority to the applicant.

~~(3) Refund of excess fees: The authority will refund any surplus fees paid or deposited by an applicant or participant which exceed the actual application processing expenses and authority-determined pro rata administrative and operating costs of the authority.~~

~~(4) All the costs and expenses of the authority shall be paid from fees assessed pursuant to this section. No moneys of the state of Washington shall be expended for such purposes.)~~

(2) Annual charge: The authority shall assess an annual charge of one-tenth of one percent of the outstanding and unredeemed bonds of each applicant. The initial annual charge shall be paid to the authority on the date of closing of each note, lease or bond issue and on every anniversary date thereafter; provided, however, that the authority by an adopted motion may set a reduced schedule of charges and may waive all or any part of the annual charge.

(3) Application charge: An applicant shall submit with its application an initial charge of one-tenth of one percent of the requested borrowing up to a maximum of \$7,500; provided, however, that the authority may by adopted motion waive all or any part of the application charge.

AMENDATORY SECTION (Amending WSR 79-10-101, filed 9/26/79)

**WAC 247-16-050 Processing of application.** An application will be reviewed by the executive director and such authority staff as he or she determines (~~(. Upon completion of authority staff analysis and recommendations, such staff analysis and recommendations and)~~) for completeness and whether the applicant and the project meets the definitions of "health care facility," "participant," and "project" as those terms are used in chapter 70.37 RCW. Upon determination by authority staff that the application is complete and meets statutory definitions, the application shall be presented to the authority for appropriate action.

AMENDATORY SECTION (Amending WSR 81-24-038, filed 11/25/81)

**WAC 247-16-060 Priorities regarding applicant funding.** The authority will process health care facility applications (~~(for assistance)~~) in the order of their date of receipt. The date of receipt shall be the date (~~(the health care facility)~~) a completed application together with the application (~~(fee)~~) charge is received by the authority at its Olympia office.

The authority reserves the right to change priorities and scheduling when the authority determines that a "first come, first served" priority scheduling is detrimental to the sale of another health care facility's bond issue or (~~(when conditions of health and safety or public benefit require a different priority)~~) otherwise not in the public interest.



NEW SECTION

**WAC 247-16-065 Authority acceptance of applications.** Upon determination by authority staff that the application is complete and that the project and applicant meet the statutory definitions for "health care facility," "participant," and "project," the authority shall meet to review and consider the staff review and recommendations regarding the application. The authority may accept, reject, or conditionally accept an application. Action regarding the application shall be determined based upon application completeness, and whether the proposed borrower and project are eligible for financing under chapter 70.37 RCW. Acceptance of the application begins the process of structuring the proposed bond issue and does not obligate the authority to issue bonds for the project or applicant.

AMENDATORY SECTION (Amending WSR 81-24-038, filed 11/25/81)

**WAC 247-16-070 Authority action on (~~applications~~) resolutions.**

(1) The authority shall meet to review and consider the staff analysis and recommendations (~~and~~) regarding the (~~application~~) adoption of a resolution.

(2) The authority may (~~approve an application and~~) adopt a resolution authorizing the issuance of bonds for the requested financing where it determines:

(a) (~~It is necessary or advisable for the benefit of the public health for the authority to provide financing for the proposed project;~~) The applicant may reasonably be expected to achieve successful completion of the health care facilities to be financed by the authority;

(b) The applicant (~~can reasonably be expected to achieve successful completion of the health care facilities to be financed by the authority~~) and the project meet the definitions of "health care facility," "participant," and "project" as those terms are used in chapter 70.37 RCW;

(c) The proposed project and the issuance of bonds by the authority for such project are economically feasible and can be undertaken on terms economically satisfactory to the authority;

(d) The proposed (~~health care facility, if completed as described in the application, will carry out the purposes and policies of the act;~~

~~(e) The applicant has satisfied the authority that substantially all of the savings realized by the applicant from the availability of financing through tax-exempt bonds, as contrasted to financing through taxable debt, will be passed on by the applicant to its patients;~~

~~(f) The applicant has reasonably satisfied the requirements of the act and these regulations; and~~

~~(g) Other criteria that the authority has determined are appropriate factors in its decision-making process have been met.~~

(3) The authority may approve an application and a bond resolution on a conditional basis where the criteria of WAC 247-16-070(2) have been met and pending satisfaction of such other conditions or requirements as the authority shall determine to be reasonable and necessary in order to carry out the purposes, policies and requirements of the act and these regulations. The applicant shall be notified in writing of such conditions or requirements, which may include, but

need not be limited to, the amendment of an application or proposed bond resolution in order to meet the availability of funds, changes in costs, or other purposes or circumstances which may enhance the ability of the authority or the applicant to complete the project or better serve the purposes and policies of the act. Upon the satisfaction of such additional conditions or requirements, the application shall be deemed approved pursuant to WAC 247-16-070(2).

(4) ~~The authority may also deny an application; in such event, it shall notify the applicant of such action, specifying in writing the reasons for its denial.)~~ project does not require a certificate of need, or such certificate of need has been received; and

(e) The participant has satisfied the authority that the estimated financial benefits resulting from financing its project with authority bonds, as opposed to obtaining financing other than through authority bonds, will be used for building, providing and utilization of modern, well equipped and reasonably priced health care facilities in a manner that will minimize the capital cost of construction, financing and use thereof and thereby the cost to the public for the use of such facilities, and will contribute to improving the quality of health care.

AMENDATORY SECTION (Amending WSR 81-24-038, filed 11/25/81)

**WAC 247-16-090 Selection of investment banking firms as underwriters.** (1) The applicants may select an investment banking firm or firms as senior managing underwriter or co-senior managing underwriters for its proposed financing, subject to review and approval by the authority. In every instance, the senior manager selected must be able to demonstrate a familiarity, competence and experience in the structuring and sale of health care facility bonds. ~~((The applicant shall notify the authority in writing of its proposed senior manager selection fifteen days prior to the date it intends to enter into a formal contractual agreement. The authority will notify the applicant of its acceptance or rejection of the applicant's senior manager selection no later than ten days after receipt of the applicant's notification. If rejected, the authority will set forth the reasons for rejection, and))~~ If the authority rejects the applicant's requested senior manager or co-senior managers, the applicant will then propose another senior manager or co-senior managers, subject to authority approval in the same manner.

(2) To provide balanced management knowledge and sale distribution and to assure the most ~~((realistic))~~ favorable bond terms and interest, the authority reserves the right to name investment banking firms as co-managers of any authority bond issue(s). ~~((The authority will not name an investment banking firm or firms as a co-managing underwriter or co-managing underwriters on bond issues of less than \$10 million unless the authority determines that special circumstances so require.))~~ On issues of ~~((more than \$10 million))~~ \$20,000,000 or more, the authority ~~((will))~~ may name a co-manager or co-managers ~~((for each issue))~~. The authority will also review the division of the management fee ~~((in each instance where a co-manager is named. While the authority will actually select the co-managers, it will consider recommendations from the applicant as to the selection of any co-manager or co-managers.~~

~~In each instance, the applicant will be given a written notification fifteen days prior to the authority's actual designation of an investment banking firm or firms as a co-manager on a particular bond issue) and the allocation of bonds and the takedown.~~

AMENDATORY SECTION (Amending WSR 81-24-038, filed 11/25/81)

**WAC 247-16-100 Feasibility studies and selection of a feasibility consultant.** ~~(1) The authority ((shall maintain a list of management and accounting firms which it deems qualified to conduct feasibility studies for the applicants. The applicant's selection of a firm from the approved list shall constitute authority approval. In the event an applicant wishes to select a firm not on the approved list, the authority will review the proposed firm's qualifications on a case-by-case basis, based on its familiarity, competence, and experience in health care)) may require the applicant to deliver a feasibility study on the project.~~

(2) The applicant may select management and accounting firms to conduct feasibility studies, subject to authority approval. The applicant shall not enter into any contractual agreement with a management or accounting firm ~~((not on the approved list))~~ until ~~((written))~~ approval has been granted by the authority.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 247-16-035            Applications for equipment financing assistance.