

**WSR 13-16-030**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed July 29, 2013, 2:33 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Amending WAC 246-822-990, 246-828-990, and 246-847-990, the proposed rules implement ESB 5206 by adding an annual surcharge to credentialing fees for dietitians and nutritionists, occupational therapists, occupational therapy assistants, and speech language pathologists. The surcharge supports the University of Washington (UW) Health Resources for Washington online resource library, also known as HEAL-WA.

Hearing Location(s): Department of Health, Point Plaza East, Rooms 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on September 12, 2013, at 1:00 p.m.

Date of Intended Adoption: October 1, 2013.

Submit Written Comments to: Lisa Hodgson, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by September 12, 2013.

Assistance for Persons with Disabilities: Contact Susan Chamberland by September 5, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESB 5206 amends RCW 43.70.110 (3)(c), adding five practitioner types that must pay an annual credential surcharge to access the HEAL-WA online resource library: Dietitians and nutritionists, occupational therapists, occupational therapy assistants, speech language pathologists, and licensed practical nurses. HEAL-WA fees for licensed practical nurses will be covered in a separate proposal revising other nursing credential fees.

The HEAL-WA library gives health care practitioners access to online clinical resources, journals, decision support tools, research and other evidence-based materials at a lower cost than would be available to practitioners subscribing to these resources individually.

Under the proposed rules, practitioners in the professions added by ESB 5206 with a one-year licensing cycle will have a \$16 annual HEAL-WA surcharge added to their initial credential fee (for new applicants) and to each renewal. Professions with a two-year licensing cycle will have a \$32 surcharge (\$16 per year) added to their initial credentialing fee and to each renewal thereafter.

Reasons Supporting Proposal: The department is directed to add a surcharge annually on credentialing fees of practitioners in each of the professions listed in RCW 43.70.-110 (3)(c) to support the HEAL-WA online library. The proposed rules would implement ESB 5206 by adding an annual \$16 HEAL-WA surcharge to credential fees for dietitians and nutritionists, occupational therapists, occupational therapy assistants, and speech language pathologists. Surcharge revenue collected is transferred to the UW. All credentialed members of these professions would be able to access the HEAL-WA resource library.

Statutory Authority for Adoption: RCW 43.70.280.

Statute Being Implemented: RCW 43.70.110 as amended by ESB 5206 (chapter 249, Laws of 2013).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Andy Fernando, 111 Israel Road, Tumwater, WA 98501, (360) 236-4692; Implementation and Enforcement: Lisa Hodgson, 111 Israel Road, Tumwater, WA 98501, (360) 236-2927.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(b), a small business economic impact statement is not required for proposed rules that set fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

July 29, 2013  
 Jessica Todorovich  
 for John Wiesman, DrPH, MPH  
 Secretary

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

**WAC 246-822-990 Dietitian and nutritionist fees and renewal cycle.** (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title	Fee
Application	\$100.00
Renewal	70.00
<u>HEAL-WA* surcharge—Application and renewal</u>	<u>16.00</u>
Late renewal penalty	50.00
Expired certificate reissuance	50.00
Duplicate certificate	30.00
Certification of certificate	30.00

\* HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

**WAC 246-828-990 Hearing instrument fitter/dispenser, audiologist, speech language pathologist, and speech language pathology assistant fees and renewal cycle.** (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Practitioners must pay the following nonrefundable fees:

**Audiologist or Speech Language Pathologist**

<b>Fee Type:</b>	<b>Fee</b>
Interim permit	
Application	\$165.00
Permit	140.00
Initial license	
Application	165.00
License	140.00
<u>HEAL-WA* surcharge</u>	<u>16.00</u>
Renewal	110.00
<u>HEAL-WA* surcharge</u>	<u>16.00</u>
Inactive license	60.00
Late renewal penalty	90.00
Expired license reissuance	140.00
Expired inactive license reissuance	90.00
Certification of license	30.00
Duplicate license	30.00

\* Surcharge applies to speech language pathologists only. HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

**Hearing Instrument Fitter/Dispenser**

<b>Fee Type:</b>	<b>Fee</b>
License application	\$165.00
Initial license	140.00
Renewal	110.00
Inactive license	56.00
Late renewal penalty	90.00
Expired license reissuance	136.00
Expired inactive license reissuance	86.00
Certification of license	30.00
Duplicate license	30.00

**Speech Language Pathology Assistant**

<b>Fee Type:</b>	<b>Fee</b>
Application	\$125.00
Renewal	70.00
Inactive credential	50.00
Late renewal penalty	50.00
Expired credential reissuance	50.00
Expired inactive credential reissuance	50.00
Certification of credential	15.00
Duplicate credential	15.00

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

**WAC 246-847-990 Occupational therapy fees and renewal cycle.** (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for occupational therapist:

<b>Title of Fee</b>	<b>Fee</b>
Application and initial license fee	\$175.00
License renewal	145.00
<u>HEAL-WA* surcharge - Initial license and renewal (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
Limited permit fee	55.00
Late renewal fee	80.00
Expired license reissuance	80.00
Inactive license	15.00
Expired inactive license reissuance	15.00
Duplicate license	30.00
Certification of license	30.00

(3) The following nonrefundable fees will be charged for occupational therapy assistant:

<b>Title of Fee</b>	<b>Fee</b>
Application and initial license fee	175.00
License renewal	125.00
<u>HEAL-WA* surcharge - Initial license and renewal (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
Late renewal fee	70.00
Expired license reissuance	70.00
Inactive license	15.00
Expired inactive license reissuance	14.00
Limited permit fee	45.00
Duplicate license	30.00
Certification of license	30.00

\* HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

**WSR 13-16-031**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed July 29, 2013, 2:40 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-817-990 Dentist fees and renewal cycle, 246-853-990 Osteopathic fees and renewal cycle, and 246-922-990 Podiatry fees and renewal cycle. Proposing to reduce initial application and license renewal fees; increase the surcharge for the impaired dentist program and clarify this surcharge applies to the renewal of active and inactive dentist licenses; and make general housekeeping edits.

Hearing Location(s): Department of Health, Point Plaza East, Rooms 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on September 12, 2013, at 1 p.m.

Date of Intended Adoption: October 1, 2013.

Submit Written Comments to: Dick Goldsmith, Health Systems Quality Assurance, P.O. Box 47830, Olympia, WA 98504-7830, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by September 12, 2013.

Assistance for Persons with Disabilities: Contact Susan Chamberland by September 5, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current licensing fees generate more revenue than needed to cover the full cost of administering the credentialing programs for these professions. The department is proposing to amend WAC 246-817-990, 246-853-990, and 246-922-990 to reduce the initial application and license renewal fees for these professions as shown below.

Fee Reductions and Impaired Dentist Program Surcharge

Table 1

Profession	Current Application Fee*	Proposed Application Fee (Percent Change Over Current Fee)	Current Active Renewal Fee	Proposed Active Renewal Fee (Percent Change Over Current Fee)
Dentist	\$700	\$500 (-28.6 %)	\$551	\$350 (-36.5 %)
Osteopathic Physician and Surgeon	\$600	\$425 (-29.2 %)	\$600	\$425 (-29.2 %)
Podiatric Physician and Surgeon	\$975	\$650 (-33.3%)	\$975	\$650 (-33.3%)

\*For dentist, pertains to initial application fee for original application by examination, initial application fee for original application - without examination, and initial license fee for original application - without examination. For osteopathic physician and surgeon, pertains to endorsement application fee.

Table 2

Proposed Impaired Dentist Program Surcharge	Current Active Renewal Fee + Current Impaired Dentist Program Surcharge	Proposed Active Renewal Fee + Proposed Impaired Dentist Program (Percent Change Over Current Renewal Fee + Current Surcharge)
\$50	\$551 + \$25 = \$576	\$350 + \$50 = \$400 (-30.6.6%)

\*\*RCW 18.32.534(2) requires the department to impose this surcharge on each license issuance or renewal; the department chose to do so on all license renewals. As part of its proposal, the department would revise the text in WAC 246-817-990(3) to clarify that a dentist must pay this surcharge when renewing an active or inactive license.

The department also is proposing to increase the surcharge from \$25 to \$50 for the impaired dentist program as directed by HB 1534 (chapter 129, Laws of 2013), which is added to the fee when a dentist renews his or her license. In

addition, the department is proposing to amend the list of dentist fees to clarify that this surcharge applies to the renewal of an inactive dentist license.

General housekeeping edits are also proposed.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the department's licensure costs. Reducing fees to proposed levels will align revenue with each program's expenses and enable reserves to be maintained should unanticipated events, such as complaint increases, occur. A \$25 surcharge imposed on the renewal of active and inactive dentist licenses currently finances the impaired dentist program. RCW 18.32.534, as amended by HB 1534, requires the department to increase this surcharge to no more than \$50.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: HB 1534 (chapter 129, Laws of 2013).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Dick Goldsmith, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4985; Implementation: Shannon Beigert, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4606; and Enforcement: Blake Maresh, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

July 29, 2013  
 Jessica Todorovich  
 for John Wiesman, DrPH, MPH  
 Secretary

**AMENDATORY SECTION** (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

**WAC 246-817-990 Dentist fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
<b>Original application by examination*</b>	
Initial application	<del>\$(700.00)</del> <u>500.00</u>
<b>Original application - Without examination</b>	
Initial application	<del>((700.00))</del> <u>500.00</u>
Initial license	<del>((700.00))</del> <u>500.00</u>
<b>Faculty license application</b>	560.00
<b>Resident license application</b>	115.00
<b><u>Active license renewal:</u></b>	

Title of Fee	Fee
Renewal	<del>((551.00))</del> <u>350.00</u>
Surcharge - Impaired dentist	<del>((25.00))</del> <u>50.00</u>
Late renewal penalty	288.00
Expired license reissuance	300.00
<b>Inactive license renewal:</b>	<del>((125.00))</del>
<u>Renewal</u>	<u>125.00</u>
<u>Surcharge - Impaired dentist</u>	<u>50.00</u>
<del>((Inactive))</del> Late renewal penalty	50.00
<b>Duplicate license</b>	15.00
<b>Certification of license</b>	25.00
<b>Anesthesia permit</b>	
Initial application	150.00
Renewal - (Three-year renewal cycle)	150.00
Late renewal penalty	75.00
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

\* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

**AMENDATORY SECTION** (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

**WAC 246-853-990 Osteopathic fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
Endorsement application	<del>\$(600.00)</del> <u>425.00</u>
Active license renewal	<del>((600.00))</del> <u>425.00</u>
Active late renewal penalty	250.00
Active expired license reissuance	250.00
Inactive license renewal	350.00
Expired inactive license reissuance	225.00
Inactive late renewal penalty	175.00
Endorsement/state exam application	500.00
Reexam	100.00

Title of Fee	Fee	Title of Fee	Fee
Certification of license	50.00	Retired active status	275.00
Limited license application	325.00	Temporary practice permit	50.00
Limited license renewal	300.00	Limited license application	400.00
Temporary permit application	70.00	Limited license renewal	475.00
Duplicate certificate	20.00	Substance abuse monitoring surcharge	25.00
Substance abuse monitoring surcharge	25.00	UW online access fee (HEAL-WA)	16.00
UW online access fee (HEAL-WA)	16.00		

(4) The following nonrefundable fees will be charged for osteopathic physician assistants:

Title of Fee	Fee
Application	\$250.00
Renewal	250.00
Late renewal penalty	150.00
Expired license reissuance	100.00
Certification of license	30.00
Practice plan	70.00
Interim permit	200.00
License after exam	100.00
Duplicate certificate	20.00
Substance abuse monitoring surcharge	25.00
UW online access fee (HEAL-WA)	16.00

**AMENDATORY SECTION** (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

**WAC 246-922-990 Podiatry fees and renewal cycle.**

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except for postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$ <del>((975.00))</del> <u>650.00</u>
License renewal	<del>((975.00))</del> <u>650.00</u>
Inactive license renewal	175.00
Inactive late renewal penalty	100.00
Active late renewal penalty	300.00
Active expired license reissuance	300.00
Expired inactive license reissuance	67.50
Duplicate license	30.00
Certification of license	50.00

**WSR 13-16-032**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed July 29, 2013, 2:58 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-282-005 Sanitary control of shellfish—Minimum performance standards, update the reference to the most current version (2011) of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish (NSSP Guide).

Hearing Location(s): Department of Health, Town Center 3, Room 252, 243 Israel Road S.E., Tumwater, WA 98501, on October 10, 2013, at 10:00 a.m.

Date of Intended Adoption: October 15, 2013.

Submit Written Comments to: Brandy Brush, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, e-mail <http://www3.doh.wa.gov/policy> review/, fax (360) 236-2257, by September 11, 2013.

Assistance for Persons with Disabilities: Contact (800) 833-6388 by September 9, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The United States Food and Drug Administration (FDA) requires all shellfish-producing states to follow the most current version of the NSSP guide in order to place molluscan shellfish into interstate commerce. WAC 246-282-005 currently references the 2009 NSSP guide. FDA has adopted a 2011 version of the NSSP guide, leaving the current rules out of date. This proposed rule updates the reference to the 2011 version of the NSSP guide.

Reasons Supporting Proposal: The FDA oversees a cooperative program between the shellfish-producing states and the shellfish industry for the production and processing of shellfish consistent with the NSSP guide. The FDA evaluates each state's shellfish sanitation control program to ensure compliance with the NSSP guide. Therefore, an update to WAC 246-282-005 is needed so that Washington state remains compliant with the NSSP guide and molluscan shellfish products from the state can continue to be placed into interstate commerce.

Statutory Authority for Adoption: RCW 69.30.030.

Statute Being Implemented: RCW 69.30.030.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3342; Implementation and Enforcement: Jerrod Davis, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3391.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or 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.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, rules of other Washington state agencies, or 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.

July 26, 2013

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 11-17-104, filed 8/22/11, effective 9/22/11)

**WAC 246-282-005 Minimum performance standards.** (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((2009)) 2011 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 C.F.R., Part 123, is

inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

### WSR 13-16-035

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed July 29, 2013, 3:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-062.

Title of Rule and Other Identifying Information: WAC 182-500-0075 Medical assistance definitions—N, 182-500-0080 Medical assistance definitions—O, 182-500-0085 Medical assistance definitions—P, 182-502-0005 Core provider agreement (CPA), 182-502-0006 Enrollment for non-billing individual providers, and 182-530-1000 Outpatient drug program—General.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on September 10, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 11, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on September 10, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 3, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are necessary to establish the medicaid agency's authority to designate willing providers as nonbilling providers and to establish rules applicable to those providers who may apply for this new designation. Nonbilling providers are health care professionals who wish to enroll with the agency to only be an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency. Also adding definitions of the terms "nursing facility long-term care services" and "nursing facility rehabilitative services" to support implementation of the Affordable Care Act (ACA).

Reasons Supporting Proposal: This is required for medicaid to be compliant with the ACA, while retaining access to clients for providers who qualify for this designation.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: 42 C.F.R. 455.410.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: Health care authority, medicaid program, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Gail Kreiger, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1681.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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.

July 29, 2013  
Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0075 Medical assistance definitions—**  
**N. "National correct coding initiative (NCCI)"** is a national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The Centers for Medicare and Medicaid Services (CMS) maintain NCCI policy. Information can be found at: <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.

**"National provider indicator (NPI)"** is a federal system for uniquely identifying all providers of health care services, supplies, and equipment.

**"NCCI edit"** is a software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, agency or the agency's designee's fee schedules, billing instructions, and other publications. The agency or the agency's designee has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards or agency or agency's designee policy.

**"Nonapplying spouse"** see "spouse" in WAC ((388-500-0100)) 182-500-0100.

**"Nonbilling provider"** is a health care professional enrolled with the agency only as an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency.

**"Noncovered service"** see "covered service" in WAC ((388-500-0020)) 182-500-0020.

**"Nursing facility"** see "institution" in WAC ((388-500-0050)) 182-500-0050.

**"Nursing facility long-term care services"** are services in a nursing facility when a person does not meet the criteria for rehabilitation. Most long-term care assists people with support services. (Also called custodial care.)

**"Nursing facility rehabilitative services"** are the planned interventions and procedures which constitute a continuing and comprehensive effort to restore a person to the person's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0080 Medical assistance definitions—**  
**O. "Ordering and referring provider"** means any physician or other health care professional who orders or refers items or services for clients eligible for Washington's health care programs administered by the agency.

**"Outpatient"** means a patient receiving care in a hospital outpatient setting or a hospital emergency department, or away from a hospital such as in a physician's office or clinic, the patient's own home, or a nursing facility.

**"Overhead costs"** means those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Overhead costs that are allocated must be clearly distinguished from other functions and identified as a benefit to a direct service.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0085 Medical assistance definitions—**  
**P. "Patient transportation"** means client transportation to and/or from covered health care services under federal and state health care programs.

**"Physician"** means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

**"Prescribing provider"** means any physician or other health care professional authorized by law or rule to prescribe drugs for current clients of Washington's health care programs administered by the agency.

**"Prior authorization"** is the requirement that a provider must request, on behalf of a client and when required by rule, the agency's or the agency's designee's approval to render a health care service or write a prescription in advance of the client receiving the health care service or prescribed drug, device, or drug-related supply. The agency's or the agency's designee's approval is based on medical necessity. Receipt of prior authorization does not guarantee payment. Expedited prior authorization and limitation extension are types of prior authorization.

**"Prosthetic devices"** means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

- Artificially replace a missing portion of the body;
- Prevent or correct physical deformity or malfunction; or
- Support a weak or deformed portion of the body.

**"Provider"** means an institution, agency, or person that is licensed, certified, accredited, or registered according to Washington state laws and rules, and:

(1) Has signed a core provider agreement or signed a contract with the agency or the agency's designee, and is authorized to provide health care, goods, and/or services to medical assistance clients; or

(2) Has authorization from a managed care organization (MCO) that contracts with the agency or the agency's designee to provide health care, goods, and/or services to eligible medical assistance clients enrolled in the MCO plan.

**"Public institution"** see "institution" in WAC (~~388-500-0050~~) 182-500-0050.

AMENDATORY SECTION (Amending WSR 12-12-032, filed 5/29/12, effective 7/1/12)

**WAC 182-502-0005 Core provider agreement (CPA).** (1) The agency only pays claims submitted by or on behalf of a health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency (~~(CPA)~~), is a performing provider on an approved CPA with the agency, or has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.

(2) Performing providers of services to a medical assistance client must be enrolled under the billing providers' CPA.

(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.

(4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.

(5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the (~~CPA~~) application, except as provided in subsection (6) of this section or WAC 182-502-0006(5).

(6) Enrollment of a provider applicant is effective on the date the agency approves the provider application.

(a) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(c) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.

(d) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

#### NEW SECTION

**WAC 182-502-0006 Enrollment for nonbilling individual providers.** (1) The agency pays for health care services, drugs, supplies or equipment prescribed, ordered, or referred by a health care professional only when the health care professional has one of the following approved agreements with the agency and all other conditions of payment have been met (see WAC 182-501-0050):

(a) Core provider agreement, in accordance with WAC 182-502-0005; or

(b) Nonbilling provider agreement, in accordance with subsection (4) of this section.

(2) Only a licensed health care professional whose scope of practice under their licensure includes ordering, prescribing, or referring may enroll as a nonbilling provider.

(3) Nothing in this chapter obligates the agency to enroll any health care professional who requests enrollment as a nonbilling provider.

#### (4) **Enrollment.**

(a) To enroll as a nonbilling provider with the medicaid agency, a health care professional must, on the date of application:

(i) Not already be enrolled with the medicaid agency as a billing or servicing provider;

(ii) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules;

(iii) Be enrolled with medicare, when required in specific program rules;

(iv) Have current professional liability coverage, individually or as a member of a group;

(v) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(vi) Pass the agency's screening process, including license verifications, data base checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare;

(vii) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;

(viii) Sign, without modification, a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002). The medicaid agency and each



provider signing a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of this agreement.

(b) The medicaid agency does not enroll a nonbilling provider for reasons which include, but are not limited to, the following:

(i) The agency determines that:

(A) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC 182-502-0030 (1)(a)); or

(B) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).

(ii) The health care professional:

(A) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(B) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(C) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(D) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(E) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(F) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(G) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014, except that subsection (2) of this section does not apply to nonbilling providers;

(H) Does not have sufficient liability insurance according to (a)(i) of this subsection for the scope of practice; or

(I) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.

(5) **Effective date of enrollment of nonbilling provider.** Enrollment of a nonbilling provider applicant is effective on the date the agency approves the nonbilling provider application.

(a) A nonbilling provider applicant may ask for an effective date earlier than the agency's approval of the nonbilling provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the nonbilling provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(6) **Continuing requirements.** To continue eligibility, a nonbilling provider must:

(a) Only order, refer, or prescribe for clients consistent with the scope of their department of health (DOH) licensure and agency program rules;

(b) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(c) Document that the client was informed that the provider:

(i) May bill the client for any billable item or service. The rules in WAC 182-502-0160 do not apply; and

(ii) Is enrolled with the agency for the sole purpose of ordering, prescribing, or referring items or services for clients.

(d) Inform the agency of any changes to the provider's Medicaid Enrollment Application and Agreement for Non-billing Individual Providers form (HCA 13-002) including, but not limited to, changes in:

(i) Address or telephone number;

(ii) Business name.

(e) Retain a current professional state license, registration, certification and applicable business license for the service being provided, and update the agency of all changes;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Maintain professional liability coverage requirements;

(h) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(i) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(j) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information;

(ii) Submitting forms as required by the agency including, but not limited to, a new Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002); and

(iii) Passing the agency's screening process as specified in subsection (4)(a)(vi) of this section.

(k) Follow the laws and rules that govern the agency's programs. A nonbilling provider may contact the agency with questions regarding the agency's programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a nonbilling provider from this requirement.

**(7) Audit or investigation.**

(a) Audits or investigations may be conducted to determine compliance with the rule and regulations of the program.

(b) If an audit or investigation is initiated, the provider must retain all original records and supportive materials until the audit is completed and all issues are resolved even if the period of retention extends beyond the required six year period.

**(8) Inspection; maintenance of records.** For six years from the date of services, or longer if required specifically by law, the nonbilling provider must:

(a) Keep complete and accurate medical records that fully justify and disclose the extent of the services or items ordered, referred or prescribed.

(b) Make available upon request appropriate documentation, including client records, supporting material for review by the professional staff within the agency or the U.S. Department of Health and Human Services. The nonbilling provider understands that failure to submit or failure to retain adequate documentation may result in the termination of the nonbilling provider's enrollment.

**(9) Terminations.**

(a) The agency may immediately terminate a nonbilling provider's agreement, and refer the nonbilling provider to the appropriate state health professions quality assurance commission for:

(i) Any of the reasons in WAC 182-502-0030 termination for cause (except that subsection (1)(a)(ix) and (b)(i) do not apply); and

(ii) Failure to comply with the requirements of subsections (4), (6), and (8) of this section.

(b) Either the agency or the provider may terminate this agreement for convenience at any time with thirty calendar days' written notification to the other.

(c) If this agreement is terminated for any reason, the agency will pay for services ordered, referred, or prescribed by the provider only through the date of termination.

**(10) Termination disputes.**

(a) To dispute terminations of a nonbilling provider agreement under subsection (9)(a) of this section, the dispute process in WAC 182-502-0050 applies.

(b) Nonbilling providers cannot dispute terminations under subsection (9)(b) of this section.

AMENDATORY SECTION (Amending WSR 13-04-095, filed 2/6/13, effective 3/9/13)

**WAC 182-530-1000 Outpatient drug program—General.** (1) The purpose of the outpatient drug program is to reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to medicaid agency rules and subject to the limitations and requirements in this chapter.

(2) The agency reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 182-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 182-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 182-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 182-530-2000 (1)(g));

(c) Prescribed by:

(i) A provider with an approved core provider agreement; ~~((or))~~

(ii) A provider who is enrolled as a performing provider on an approved core provider agreement; or

(iii) A provider who is enrolled as a nonbilling provider.

(d) Within the scope of an eligible client's medical assistance program;

(e) Medically necessary as defined in WAC 182-500-0070 and determined according to the process found in WAC 182-501-0165;

(f) Authorized, as required within this chapter;

(g) Billed according to WAC 182-502-0150 and 182-502-0160; and

(h) Billed according to the requirements of this chapter.

(3) Coverage determinations for the agency are made by the agency's pharmacists or medical consultants in accordance with applicable federal law. The agency's determination may include consultation with the drug use review (DUR) board.

**WSR 13-16-069**

**PROPOSED RULES**

**SPOKANE REGIONAL**

**CLEAN AIR AGENCY**

[Filed August 5, 2013, 10:54 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article VI, Section 6.01 - Outdoor Burning and SRCAA Regulation I, Article X, Section 10.13 - Outdoor Burning Permit Fees.

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta Avenue, Spokane, WA 99207, on October 3, 2013, at 9:30 a.m.

Date of Intended Adoption: October 3, 2013.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by September 20, 2013.

Assistance for Persons with Disabilities: Contact Barbara Nelson by September 26, 2013, (509) 477-4727 ext. 116.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** In summary, revisions are designed to make the regulation largely a stand-alone document which will help alleviate the need to routinely cross-reference the Washington Administrative Code (WAC) for applicable requirements. It will incorporate the definitions into applicable subsections, where practical, so that there's no need to jump between the body of the regulation and the definitions section when reading the regulation. For each type of outdoor burning, it lists applicable requirements. The proposal addresses forest fire training and other types of firefighting instruction fires (e.g., car rescue training fires, simulated fires at permanent fire training facilities, mobile fire training units, etc.). Like other fire training fires in the current regulation, these fires would be allowed by rule (no written permit and no fee). The proposal also allows for flag retirement ceremonies by rule. The revisions include a nuisance provision specific to outdoor burning. All permit waiting periods are made to be consistent with the only fee increase proposal being for social event fires (\$50 to \$55).

**Reasons Supporting Proposal:** Same as above.

**Statutory Authority for Adoption:** RCW 70.94.141, 70.94.380(2), 70.94.6518, and chapter 173-425 WAC.

**Statute Being Implemented:** RCW 70.94.755, 70.94.-6511-[70.94.]6518, 70.94.6544-[70.94.]6552, chapter 173-425 WAC.

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

**Name of Proponent:** SRCAA, governmental.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. SRCAA is not required under chapter 19.85 RCW to file small business economic impact statements.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1). RCW 34.05.328 does not apply to this rule.

August 5, 2013  
Matt Holmquist  
Compliance Administrator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-17 issue of the Register.

**WSR 13-16-071**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 5, 2013, 2:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-040.

**Title of Rule and Other Identifying Information:** Amends WAC 181-79A-030 to add citation of RCW and new content requirements from Laws of 2013, SB [ESSB] 5563 and HB [ESHB] 1336, including child exploitation, suicide prevention and social/emotional distress identification and response.

**Hearing Location(s):** Red Lion Inn at the Park, 303 West North River Drive, Spokane, WA 99201, on September 19, 2013, at 8:30.

**Date of Intended Adoption:** September 19, 2013.

**Submit Written Comments to:** David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 19, 2013.

**Assistance for Persons with Disabilities:** Contact David Brenna by September 19, 2013, (360) 725-6238.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** During the 2013 legislative session, HB [ESHB] 1336 and SB [ESSB] 5563 both amended requirements for the mandated educator course on issues of abuse.

**Reasons Supporting Proposal:** Meets statutory requirements.

**Statutory Authority for Adoption:** Chapter 28A.410 RCW.

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

**Name of Proponent:** Professional educator standards board, governmental.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

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

August 5, 2013  
David Brenna  
Senior Policy Analyst

**AMENDATORY SECTION** (Amending WSR 12-18-005, filed 8/23/12, effective 9/23/12)

**WAC 181-79A-030 Definitions.** The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," "interstate compact," "college or university," and "regionally accredited institution of higher education," as defined in WAC 180-78-010 and 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended.

(4) "Certificate reinstatement" means the process whereby the validity of an expired certificate is regained.

(5) "Lapsed certificate" means a residency certificate that is subject to the timelines and renewal described under WAC 181-79A-251.

(6) "Expired certificate" means a teacher certificate that can only be reinstated under WAC 181-79A-251.

(7) "Classroom teaching" means instructing pupils in an instructional setting.

(8) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from a regionally accredited college or university in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 181-79A-299, the candidate may hold a baccalaureate degree in any of the subject areas of the endorsements listed in WAC 181-79A-302. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 181-82 WAC: Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 181-82A-202.

(9) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention. Additionally, content areas identified by the legislature in RCW 28A.410.035 shall be required in the issues of abuse course, including exploitation of minors and suicide prevention.

(10) "Approved master's degree" for the purpose of this chapter, means a master's or doctorate degree from a regionally accredited college or university.

(11) "Credit hour(s)" means credit (normally 100 level or above) awarded by a regionally accredited institution of higher education.

(12) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

(13) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

(14) "Professional growth team" for the purpose of renewal of the professional certificate, means a team comprised of the individual renewing the certificate and a minimum of three colleagues, who hold a current educator certificate, chosen by the individual.

(15) "Professional growth plan."

(a) Teacher individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks as published by the professional educator standards board.

(b) Principal/program administrator individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks set forth in WAC 181-78A-540(1).

(c) ESA individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards and career level benchmarks set forth in WAC 181-78A-540(2).

(16) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(17) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.

(18) "Approved private school" means any organization of institution providing educational services to children including, but not limited to, approved private schools, state institutions, juvenile institutions, nonpublic agencies providing special education services, development centers, and bureau of Indian affairs schools.

**WSR 13-16-073**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed August 6, 2013, 8:23 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Washington red raspberry commission, chapter 16-561 WAC.

Hearing Location(s): Bellewood Acres, 6140 Guide Meridian, Lynden, WA, on September 11, 2013, at 10:00 a.m.

Date of Intended Adoption: January 6, 2014.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., September 13, 2013.

Assistance for Persons with Disabilities: Contact WSDA receptionist by August 28, 2013, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During past legislative sessions, significant amendments were made to the Washington red raspberry commission's enabling statute, chapter 15.65 RCW. These statutory changes prompted the proposed amendments to chapter 16-561 WAC. The proposed amendments expand the commission's policy and purpose statements, update the definitions, reduce the number of voting board members and redefine district representation, update the commission member selection process, allow for the voting members to appoint up to two nonvoting advisory board members to the board, add additional power and duties to benefit the industry, update meeting and administrative procedures, and other housekeeping changing. These proposed amendments are intended to achieve consistency with the statute, as well as, improve the readability and clarity of the marketing order. The following marketing order sections are affected by the proposed amendments: Amending WAC 16-561-005 Marketing order for Washington red raspberries—Policy statement, 16-561-010 Definitions, 16-561-020 Red raspberry commodity board, 16-561-040 Assessments and collections, 16-561-060 Termination of the order and 16-561-080 Separability; new sections WAC 16-561-006 Marketing order purposes and 16-561-035 Powers and duties of the board; and repealing WAC 16-561-030 Marketing order purposes.

Reasons Supporting Proposal: The proposed amendments are intended to make the marketing order consistent with the commodity commission enabling statute, chapter 15.65 RCW, and to implement the petition received from the Washington red raspberry commission in accordance with RCW 15.65.050.

Statutory Authority for Adoption: RCW 15.65.047 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Any rule proposal that results from this rule-making process will not be adopted unless the proposed rules

are also approved in a referendum of affected red raspberry producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington state red raspberry commission, governmental.

Name of Agency Personnel Responsible for Drafting: Kelly Frost, P.O. Box 42560, Olympia, WA 98504, (360) 902-1802; Implementation and Enforcement: Washington Red Raspberry Commission, Lynden, Washington, (360) 354-8767 and Department of Agriculture, Olympia, Washington, (360) 902-1802.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Any adoption of the amendments to chapter 16-561 WAC would ultimately be determined by a referendum vote of the affected parties. A formal small business economic impact statement under chapter 19.85 RCW is not required because of the exemption granted in RCW 15.65.570(2).

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington red raspberry commission are not named agencies in RCW 34.05.328 (5)(a)(i).

August 6, 2013  
 Don R. Hover  
 Director

NEW SECTION

**WAC 16-561-005 Marketing order for Washington red raspberries—Policy statement.** (1) The marketing of red raspberries within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its red raspberries be properly promoted by:

(a) Enabling producers of red raspberries to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing of the red raspberries they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of red raspberries within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the red raspberry industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that red raspberries be promoted individually, and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's red raspberries;

(b) Increase the sale and use of Washington state's red raspberries in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's red raspberries;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's red raspberries and products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of red raspberries produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through adoption of this marketing order.

(4) The Washington state red raspberry commodity board exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to red raspberries under the provisions of this marketing order.

#### NEW SECTION

**WAC 16-561-006 Marketing order purposes.** This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; increasing production efficiency; ensuring a fair regulatory environment; or increasing per capita consumption of red raspberries grown in Washington state. The Washington state red raspberry commodity board is designated by the director to conduct programs in accordance with chapter 15.65 RCW.

(1) To carry out the purposes of the marketing order, the board may provide for a program in one or more of the following areas:

(a) Establish plans and conduct programs for marketing, sales, promotion or other programs for maintaining present markets or creating new or larger markets for raspberries. Programs shall be directed toward increasing the sale of raspberries without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims on behalf of raspberries nor disparage the quality, value, sale, or use of any other agricultural commodity. The board may also engage in cooperative efforts in the domestic or foreign marketing of red raspberries;

(b) Develop and engage in research for developing better and more efficient production, processing, irrigation, transportation, handling, or marketing of red raspberries and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried out by Washington State University, but if in the judgment of the board, Washington State University does not have adequate facilities for a particular project or if some other research agency has better facilities, the project may be carried out by other research agencies selected by the board;

(c) Conduct programs for the purpose of providing information and education including:

(i) Marketing information and services to affected producers for the verification of weights, tests, and sampling of quality and quantity of raspberries purchased by handlers from affected producers;

(ii) Information and services enabling producers to meet their resource conservation objectives;

(iii) Red raspberry-related education and training.

(d) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of red raspberries produced in Washington state to any elected official or officer or employee of any agency.

(2) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of red raspberries; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

(3) The Washington state red raspberry commission will not adopt rules relating to grades and standards.

#### AMENDATORY SECTION (Amending WSR 86-13-012, filed 6/6/86)

**WAC 16-561-010 Definitions (~~of terms~~).** (~~For the purpose of this marketing order.~~) Definition for terms used in this chapter must be interpreted as consistent with the definitions in chapter 15.65 RCW, Washington state agricultural commodity boards.

(1) "Director" means the director of agriculture of the state of Washington or (~~his~~) the director's duly appointed representative.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Act" means the Washington State Agricultural Enabling Act (~~(of 1961)~~) or chapter 15.65 RCW.

(4) "Person" means any (~~person~~) individual, firm, (association, or) corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government.

(5) "Affected producer" means any person who produces or stores in the state of Washington raspberries in commercial quantities for fresh market, for processing, or for sale to processors. "To produce" means to act as a producer.

(6) "Commercial quantity" means any raspberries produced or stored in quantities of three tons (6,000 pounds) or more, in any calendar year.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, freezing, or distributing raspberries not produced by him or her. Handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "Red raspberry commodity board," hereinafter referred to as "board(~~s~~)" or "commission" means the commodity board formed under the provisions of WAC 16-561-020.

(9) "Raspberries" means and includes all kinds, varieties, and hybrids of "*rubus idaeus*" of red color.

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning with January 1 of any year and ending with the last day of December following, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to raspberries. A producer-handler shall be deemed to be a producer with respect to the raspberries which he or she produces and a handler with respect to the raspberries which he or she handles, including those produced by himself or herself.

(12) "Affected area" means that portion of the state of Washington located west of the summit of the Cascade Mountains.

(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

(14) "Affected unit" means one pound net of raspberries.

AMENDATORY SECTION (Amending WSR 92-12-003, filed 5/21/92, effective 6/21/92)

**WAC 16-561-020 Red raspberry commodity board.**

(1) **Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

**(2) Board membership.**

(a) The board shall consist of ~~((eleven))~~ seven voting members. ~~((Ten))~~ Six members shall be affected producers appointed or elected as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the ~~((department and the public))~~ director. The position representing the director shall be a voting member.

~~((There shall be a minimum of two producer board members per district, with additional producer board members added based on acreage; using two thousand acres as the baseline, every one thousand acres, or increment thereof, would entitle a district to another board member, so long as no single district had an over-all majority of representatives:))~~

(b) Director-appointed producer positions on the board shall be designated as position 1, position 5, and position 6.

(c) Elected producer positions on the board shall be designated as position 2, position 3, and position 4.

(d) The position representing the director who is neither an affected producer nor a handler shall be designated as position 7.

(e) For the purpose of nomination, appointment, and election of producer members of the board, the affected area shall be that portion of the state of Washington located west of the summit of the Cascade Mountains and shall be divided into ~~((four))~~ two representative districts as follows:

(i) District I shall have ~~((four))~~ three board members, being positions 1, 2, and 3, ~~((4, and 8;))~~ and shall ~~((be Whatcom County))~~ include the counties of Whatcom, Skagit, Snohomish, and King.

(ii) District II shall have ~~((two))~~ one board member~~((s))~~, being position ~~((s 1, and 7))~~ 4, and shall include ~~((the))~~ all western Washington counties ~~((of Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pierce, and Thurston))~~ not included in District I.

(iii) ~~((District III shall have two board members, being positions 5 and 9, and shall include the counties of Clark, Cowlitz, Lewis, Pacific, Skamania, and Wahkiakum.~~

(iv) District IV shall have two members, being positions 6 and 10, and shall include the counties of San Juan, Skagit, and Snohomish) Position 5 and 6 are designated as at-large position and may be filled from any western Washington county. The positions are filled in accordance with RCW 15.65.250.

(f) The voting board may also appoint up to two additional nonvoting members to serve in an advisory capacity from among the crop advisors, handlers or others with expertise in the red raspberry industry. The voting members of the board will make these appointments at the first meeting of the calendar year. Advisory board member appointments are for a one-year period. Nonvoting advisory members may serve additional consecutive terms of office if reappointed by the board.

(3) **Board membership qualifications.** The ~~((affected))~~ producer members of the board ~~((shall))~~ must be practical producers of raspberries and each shall be ~~((citizens and))~~ a resident~~((s))~~ of ~~((the))~~ this state ~~((of Washington)), and~~ over the age of ~~((twenty-five))~~ eighteen years~~((, each of whom is and has)).~~ Each producer board member must be and have been actually engaged in producing raspberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his or her income therefrom. Producer-handlers shall be considered to be acting only as producers for purpose of appointment or election and membership on a commodity board. The qualifications of members of the board as herein set forth must continue during the terms of office.

**(4) Term of office.**

(a) The term of office, for members of the board shall be three years, and one-third of the membership as nearly as possible shall be elected each year. ~~((These))~~ Terms shall expire on November 30.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through ~~((ten))~~ six and the member ~~((appointed by))~~ representing the director, position ~~((eleven))~~ seven.

(c) The term of office for the initial board members shall be as follows:

Positions one and two - One year;

Positions three, four, five, and nine - Two years;

Positions six, seven, eight, ten, and eleven - Three years.

(d) ~~((No elected member of the board may serve more than two full consecutive three-year terms.))~~ To accomplish the transition to the newly defined districts and areas and to a commodity board structure where the director appoints a majority of the voting board members, the initial producer appointments are as follows:

(i) The current incumbent representing position 6 will be appointed to the new position 1 with an expiration date of November 30, 2015;

(ii) The current incumbent representing position 8 will be appointed to the new position 2 with an expiration date of November 30, 2016;

(iii) The current incumbent representing position 3 will be appointed to the new position 3 with an expiration date of November 30, 2014;

(iv) The current incumbent representing position 5 will be appointed to the new position 4 with an expiration date of November 30, 2014;

(v) The current incumbent representing position 9 will be appointed to the new position 5 with an expiration date of November 30, 2015;

(vi) The current incumbent representing position 10 will be appointed to the new position 6 with an expiration date of November 30, 2016.

Any remaining board members not appointed to a new position will serve out the remainder of their existing term.

(e) Except for the director's representative, no appointed or elected member of the board may serve more than two full consecutive three-year terms. Any previous board member may be reelected to a qualified position after such term limits if at least one full three-year period has passed since the last date of the second consecutive term in office.

**(5) Nomination (~~and election~~) of elected or director-appointed board members.** Each year the director shall call ~~((for))~~ a nomination meeting for elected or director-appointed producer board members. ~~((Such))~~ The meeting(s) shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(a) Notice of ~~((every such))~~ a nomination meeting shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers within the affected area according to the list maintained by the ~~((director pursuant to RCW 15.65.200 of the act))~~ board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer may be nominated orally for membership on the board at ~~((such))~~ a nomination meeting. Nominations may also be made within five days after ~~((any such))~~ the meeting by written petition filed with the director, signed by not less than five affected producers. ~~((At the inception of this order, nominations may be made at the issuance hearing.))~~

**(6) Election or advisory vote of board members.**

~~((Members of the board shall be elected by secret mail ballot within the month of October))~~ An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of October. Each affected producer shall be entitled to one vote.

~~((Affected producer))~~ (b) Elected members of the board shall be elected by a majority of the votes cast by the affected producers within the affected area. ~~((Each affected producer within the affected area shall be entitled to one vote.~~

~~((b))~~ (c) If a nominee for an elected position does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

~~((e))~~ (d) An advisory vote shall be conducted for producer board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(e) Notice of every election or advisory vote for board membership shall be published in a newspaper of general cir-

ulation within the affected area not less than ten days in advance of the date of ~~((such))~~ the election. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears on the list of ~~((such))~~ affected producers within the affected area maintained by the ~~((director in accordance with RCW 15.65.200))~~ board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications.

(f) Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

**(7) Vacancies (~~prior to election~~).**

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the remaining board members shall recommend to the director a qualified person for appointment to the vacant position. The director shall appoint the person recommended by the board unless the person fails to meet the qualifications of board members under chapter 15.65 RCW and this order.

**(8) Quorum.** A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

**(9) Board compensation.** No member of the board shall receive any salary or other compensation, but each voting and advisory board member ~~((shall receive \$35.00 for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, together with travel expenses at the rates allowed state employees))~~ may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

~~((Powers and duties of the board. The board shall have the following powers and duties:~~

~~((a) To administer, enforce, and control the provisions of this order as the designee of the director.~~

~~((b) To elect a chairman and such other officers as the board deems advisable.~~

~~((c) To employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.~~

~~((d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.~~

~~((e) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.~~



~~(f) To establish a "raspberry board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, shall be deposited as often as advisable.~~

~~(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.~~

~~(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.~~

~~(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.~~

~~(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.~~

~~(k) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).~~

~~(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.~~

~~(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or the order.~~

~~(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.~~

~~(o) To authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.38.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose.~~

~~(p) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.~~

~~(11)) Procedures for board.~~

~~(a) The board shall hold regular meetings, at least four times annually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act).~~

Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change of the regular meeting schedule shall be published in the *Washington State Register* at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by regular news service.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice to a member of any special meeting may be waived by a waiver ~~((thereof by each))~~ from that member of the board. Notice of special meetings will be in compliance with chapter 42.30 RCW.

NEW SECTION

**WAC 16-561-035 Powers and duties of the board.**

The board shall have the following powers and duties to:

(1) Administer, enforce, and control the provisions of this order as the designee of the director.

(2) Elect a chairman and such other officers as the board deems advisable.

(3) Employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(4) Pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(5) Reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(6) Establish a "raspberry board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board shall be deposited as often as advisable.

(7) Keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.

(8) Require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or

employee is covered by any blanket bond covering officials or employees of the state of Washington.

(9) Prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least fifteen days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(10) Establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(11) Adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(12) Carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(13) Bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or the order.

(14) Confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.

(15) Authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose.

(16) Work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(17) Enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.26 RCW.

(18) Accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(19) Enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of red raspberries.

(20) Retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(21) Engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(22) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation,

distribution, sale, or use of red raspberries, including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission.

(23) Maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the units of each producer's production pursuant to RCW 15.65.295. This list may be compiled from information used to collect producer assessments for a three-year period.

(24) Maintain a list of the names and addresses of persons who handle red raspberries within the affected area and data on the amount of the red raspberries handled by each person pursuant to RCW 15.65.295 for a minimum three-year period.

(25) Establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(26) Acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to red raspberries.

(27) Submit for review and approval by the director of any new or amended marketing, including for the purposes required under RCW 15.65.287.

(28) Carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

AMENDATORY SECTION (Amending WSR 86-13-012, filed 6/6/86)

**WAC 16-561-040 Assessments and collections. (1) Assessments.**

(a) The annual assessment on all varieties of raspberries shall be one-half cent per affected unit (pound).

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(iii) Require in the case of assessments against affected units stored in frozen condition:

(A) Cold storage facilities storing ~~((such))~~ the commodity to file information and reports with the commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(B) That ~~((such))~~ the commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

(c) Subsequent to the first sale, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped, stored, or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of ~~((the))~~ this order during or with respect to any season or year, may be refunded

on a pro rata basis at the close of ~~((such))~~ the season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of ~~((such))~~ this marketing ~~((agreement or))~~ order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year, or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in ~~((such))~~ a specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of ~~((such))~~ the assessment or ~~((such))~~ other sum on or before the date due, the board may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of ~~((the same))~~ it. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent ~~((thereon))~~, and ~~((such))~~ the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

AMENDATORY SECTION (Amending Order 1478, filed 7/29/76)

**WAC 16-561-060 Termination of the order.** ~~((The order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent such dissolution. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether such termination is so assented to or favored whenever twenty percent by numbers and twenty percent by volume of production of the affected producers file written application with him for such termination. The termination shall not, however, become effective until the expiration of the marketing season.))~~ Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.

AMENDATORY SECTION (Amending Order 1478, filed 7/29/76)

**WAC 16-561-080 ((Separability)) Severability.** If any provisions hereof are declared invalid, or the applicability thereof to any person, circumstances, or thing is held invalid, the validity of the remainder hereof or of the applicability thereof to any other person, circumstances, or thing shall not be affected thereby.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-561-030 Marketing order purposes.

## **WSR 13-16-075**

### **PROPOSED RULES**

### **PROFESSIONAL EDUCATOR**

### **STANDARDS BOARD**

[Filed August 6, 2013, 9:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-037.

Title of Rule and Other Identifying Information: Amends WAC 181-82A-215 requiring new certificates issued with either a special education, early childhood special education, English language learner or bilingual must have an accompanying endorsement in an academic content area.

Hearing Location(s): Red Lion at the Park, 303 West North River Drive, Spokane, WA 99201, on September 19, 2013, at 8:30.

Date of Intended Adoption: September 19, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 12, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by September 12, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Teachers with endorsements that describe special skills required to work with certain students will be required to also have an academic content area expertise indicated by endorsement. This applied to new issues after September 2014, and does not apply to out-of-state reciprocal endorsements.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

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

August 6, 2013

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 07-19-057, filed 9/14/07, effective 10/15/07)

**WAC 181-82A-215 Implementation policies.** (1) In order to maintain an endorsement for which revised competencies have been adopted by the professional educator standards board after January 1, 2007, each college or university shall seek reapproval per WAC 181-82A-206(2) according to the timeline adopted and published by the professional educator standards board.

(2) All individuals seeking to obtain endorsements after September 1, 2009, shall meet the requirements adopted by the professional educator standards board after January 1, 2007. Prior to September 1, 2009, individuals shall meet endorsement and testing requirements identified on the timeline adopted and published by the professional educator standards board.

(3) Teachers shall be required to obtain a minimum of one endorsement. Provided, that a teacher who obtains a special education, early childhood education, bilingual education, or English language learner endorsement after September 1, 2014, must earn and/or hold a second endorsement in a core academic content area.

**WSR 13-16-078**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)  
 [Filed August 6, 2013, 9:56 a.m.]

WAC 388-877A-0175 and 388-877A-0185, proposed by the department of social and health services in WSR 13-02-028, appearing in issue 13-03 of the Washington State Register, which was distributed on February 6, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 13-16-079**  
**WITHDRAWAL OF PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

(By the Code Reviser's Office)  
 [Filed August 6, 2013, 9:56 a.m.]

WAC 392-340-336, proposed by the superintendent of public instruction in WSR 13-03-004, appearing in issue 13-03 of the Washington State Register, which was distributed on February 6, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 13-16-080**  
**WITHDRAWAL OF PROPOSED RULES**  
**OLYMPIC COLLEGE**

(By the Code Reviser's Office)  
 [Filed August 6, 2013, 9:56 a.m.]

WAC 132C-10-020, proposed by the Olympic College in WSR 13-03-042, appearing in issue 13-03 of the Washington State Register, which was distributed on February 6, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 13-16-083**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 12-05—Filed August 6, 2013, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-020.

Title of Rule and Other Identifying Information: Creating chapter 173-476 WAC, Ambient air quality standards and repealing chapter 173-470 WAC, Ambient air quality standards for particulate matter, chapter 173-474 WAC, Ambient air quality standards for sulfur oxides, and chapter 173-475 WAC, Ambient air quality standards for carbone [carbon] monoxide, ozone, and nitrogen dioxide.

Hearing Location(s): Department of Ecology, Headquarters, 300 Desmond Drive S.E., Lacey, WA 98503, on September 10, 2013, at 10:30 a.m. Presentation, question and answer session followed by the formal public hearing on the rule proposal. The SIP hearing will follow.

Date of Intended Adoption: October 15, 2013.

Submit Written Comments to: Margo Thompson, P.O. Box 47600, Olympia, WA 98504-7600, e-mail AQComments@ECY.WA.GOV, fax (360) 407-7534, by September 19, 2013.

Assistance for Persons with Disabilities: Contact Margo Thompson at (360) 407-6827, by September 3, 2013. If you have hearing loss, call TTY 771 or for Washington relay service if you have speech disability call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes to adopt the current national ambient air quality standards for the following air pollutants into a new chapter:

- Particulate matter (PM-10).
- Particulate matter (PM-2.5).
- Lead (Pb).
- Sulfur oxides (except the annual and twenty-four hour standards).
- Nitrogen oxides.
- Ozone.
- Carbon monoxide.

We propose to retain the existing ecology sulfur oxides standards for the annual and twenty-four hour averaging periods.

We also propose to repeal the following outdated chapters because the standards included in the new rule include more updated versions of these standards. Ecology will make minor housekeeping revisions to the content of these repealed rules when including the content in chapter 173-476 WAC.

- Chapter 173-470 WAC, Ambient air quality standards (formerly chapter 18-40 WAC).
- Chapter 173-474 WAC, Ambient air quality standards for sulfur oxides (formerly chapter 18-56 WAC).
- Chapter 173-475 WAC, Ambient air quality standards for carbon monoxide, ozone, and nitrogen dioxide.

**Reasons Supporting Proposal:** The ambient air quality standards adopted in Washington state rules are outdated. Updated standards are required by the federal and state clean air acts (CAA). They protect sensitive populations including children, elderly, and people with heart and lung disease.

In order to meet requirements of the federal CAA, states must have state implementation plans (SIP). These plans describe how the state implements, maintains, and enforces national ambient air quality standards (NAAQS). The federal CAA requires Washington to revise the SIPs under certain circumstances, such as when EPA issues revised national ambient air quality standards. SIP revisions include submitting updated rules to show we can implement, maintain, and enforce the NAAQS. The changes proposed in this rule making are necessary now because:

- EPA is requiring that ecology update the NAAQS in rule before they will approve SIPs for particulate matter, sulfur oxides, carbon monoxide, ozone, nitrogen oxides, and lead.
- Ambient air quality standards must be updated in our rules to gain EPA approval of these plans. Ecology must submit SIPs for the different criteria pollutants in the NAAQS by the appropriate federal deadlines for each one. If we do not submit approvable SIPs in time, EPA will issue federal implementation plans (FIPs). Ecology, local governments, and the business community prefer ecology maintain regulatory control rather than having EPA impose regulations through a federal plan.
- Under the federal CAA, EPA cannot approve the Tacoma-Pierce County maintenance plan or redesignate the area from nonattainment to attainment until ecology meets PM-2.5 SIP requirements. We must change our rules to meet the requirements. Ecology needs to submit the maintenance plan and redesignation request in 2014. EPA's denial would result in additional stricter requirements being imposed on the area and current economic constraints would continue longer than necessary.

**Statutory Authority for Adoption:** Chapter 70.94 RCW provides sufficient authority to adopt rule changes.

**Statute Being Implemented:** Chapter 70.94 RCW.

Rule is necessary because of federal law, [no further information supplied by agency].

**Name of Proponent:** Washington state department of ecology, governmental.

**Name of Agency Personnel Responsible for Drafting:** Margo Thompson, Department of Ecology, Lacey, Washington, (360) 407-6827; **Implementation:** Alan Newman, Department of Ecology, Lacey, Washington, (360) 407-6810; and **Enforcement:** Stu Clark, Department of Ecology, Lacey, Washington, (360) 407-6880.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is exempt from requirements under chapter 19.85 RCW to develop a small business economic impact statement because the action does not impose additional costs on businesses in an industry. The proposed amendments do not impose additional costs of any kind. The proposed amendments are either "housekeeping" amendments or are mandated by federal or existing state statute.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Margo Thompson, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6827, fax (360) 407-7534, e-mail margo.thompson@ecy.wa.gov.

August 5, 2013

Polly Zehm  
Deputy Director

## Chapter 173-476 WAC

### AMBIENT AIR QUALITY STANDARDS

#### NEW SECTION

**WAC 173-476-010 Purpose.** This chapter establishes maximum acceptable levels in the ambient air for particulate matter, lead, sulfur dioxide, nitrogen oxides, ozone, and carbon monoxide.

#### NEW SECTION

**WAC 173-476-020 Applicability.** (1) The provisions of this chapter apply to all areas of the state of Washington.

(2) All federal regulations referenced in this regulation are adopted as they exist on August 3, 2013.

#### NEW SECTION

**WAC 173-476-030 Definitions.** (1) Unless a different meaning is clearly required by context, words and phrases in this chapter have meanings consistent with general terms defined in chapter 173-400 WAC.

(2) Definitions specific to this chapter:

(a) "Period" means any interval of the specified time.

(b) "ppmv" means parts per million by volume.

(c) "ppb" means parts per billion by volume, which is 1 part in 1,000,000,000 parts by volume.

(d) "Federal Reference Method" or "FRM" means an EPA designated ambient air quality sampling and analysis method specified in an appendix to 40 C.F.R. Part 50, or a

method that has been designated as a reference method according to 40 C.F.R. Part 53. It does not include a method for which a reference method designation has been canceled according to 40 C.F.R. 53.11 or 53.16.

(e) "Federal Equivalent Method" or "FEM" means an EPA designated ambient air quality sampling and analysis method that has been designated as an equivalent method according to 40 C.F.R. Part 53. It does not include a method for which an equivalent method designation has been canceled according to 40 C.F.R. 53.11 or 53.16.

#### NEW SECTION

**WAC 173-476-100 Ambient air quality standard for particulate matter, PM-10.** (1) **Standard for PM-10.** The twenty-four-hour average concentration of PM-10 in the ambient air must not exceed 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) more than one time per year, on a three-year average.

(2) **Measurement method.** The levels of PM-10 in the ambient air must be measured by:

(a) A FRM based on 40 C.F.R. Part 50, Appendix J and designated according to 40 C.F.R. Part 53; or

(b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation method.** The interpretation method found in 40 C.F.R. Part 50, Appendix K must be used.

#### NEW SECTION

**WAC 173-476-110 Ambient air quality standards for particulate matter, PM-2.5.** (1) **Standards for PM-2.5.**

(a) The three-year average of the annual arithmetic mean concentration of PM-2.5 must not exceed 12.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ).

(b) The three-year average of the ninety-eighth percentile twenty-four-hour average concentration of PM-2.5 must not exceed 35  $\mu\text{g}/\text{m}^3$ .

(2) **Measurement method.** The levels of PM-2.5 in the ambient air must be measured by:

(a) A FRM based on 40 C.F.R. Part 50, Appendix L and designated according to 40 C.F.R. Part 53; or

(b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation method.** The interpretation method found in 40 C.F.R. Part 50, Appendix N must be used.

#### NEW SECTION

**WAC 173-476-120 Ambient air quality standard for lead (Pb).** (1) **Standard for lead.** The three-month rolling average concentration of lead (Pb) and its compounds in the ambient air must not exceed 0.15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ).

(2) **Measurement method.** The levels of Pb in the ambient air must be measured by:

(a) A FRM based on 40 C.F.R. Part 50, Appendix G and designated according to 40 C.F.R. Part 53; or

(b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation method.** The interpretation method found in 40 C.F.R. Part 50, Appendix R must be used.

#### NEW SECTION

**WAC 173-476-130 Ambient air quality standards for sulfur oxides (sulfur dioxide).** (1) **Standard for sulfur oxides (measured as sulfur dioxide).**

(a) Annual. The annual average concentration for sulfur oxides in the ambient air must not exceed 0.02 ppmv in a calendar year.

(b) Twenty-four-hour. The twenty-four-hour average concentration for sulfur oxides in the ambient air must not exceed 0.1 ppmv more than once per calendar year. The twenty-four-hour averages must be determined from successive nonoverlapping twenty-four-hour blocks starting at midnight each calendar day.

(c) Three-hour. The three-hour average concentration for sulfur oxides in the ambient air must not exceed 0.5 ppmv more than once per calendar year. The three-hour averages must be determined from successive nonoverlapping three-hour blocks starting at midnight each calendar day.

(d) One-hour. The three-year average of the annual ninety-ninth percentile of the daily maximum one-hour average concentrations for sulfur oxides in the ambient air must not exceed 75 ppb.

(2) **Measurement method.** The levels of sulfur oxides must be measured as sulfur dioxide by:

(a) A FRM based on 40 C.F.R. Part 50, Appendix A or A-1; or

(b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation methods.**

(a) The annual arithmetic mean is based on the average of hourly data. To be used in calculating the annual average, the hourly data must be at least seventy-five percent complete in each calendar quarter of the year.

(b) The interpretation method for the twenty-four-hour average found in 40 C.F.R. Part 50.4(d) must be followed.

(c) The interpretation method for the three-hour average found in 40 C.F.R. Part 50.5(c) must be followed.

(d) The interpretation method for the one-hour average found in 40 C.F.R. Part 50, Appendix T must be followed.

(4) **Rounding of values.**

(a) The annual arithmetic mean must be rounded to three decimal places (fractional parts equal to or greater than 0.005 ppmv must be rounded up).

(b) The twenty-four-hour averages must be rounded to two decimal places (fractional parts equal to or greater than 0.05 ppmv must be rounded up).

(c) The three-hour standard averages must be rounded to one decimal place (fractional parts equal to or greater than 0.05 ppmv must be rounded up).

(5) **Sunset provision.** The ambient standards in WAC 173-476-130 (1)(a) and (b) are no longer applicable in a specific area one year after the effective date of the EPA's designation of attainment status of that area for the standard in WAC 173-476-130 (1)(d) and 40 C.F.R. 50.17.

#### NEW SECTION

**WAC 173-476-140 Ambient air quality standards for nitrogen oxides (nitrogen dioxide).** (1) **Standards for nitrogen oxides (measured as nitrogen dioxide).**

(a) The annual average concentration for nitrogen oxides in ambient air must not exceed 53 ppb (100  $\mu\text{g}/\text{m}^3$ ) measured in the ambient air as nitrogen dioxide.

(b) The three-year average of the ninety-eighth percentile of the daily maximum one-hour average concentration of nitrogen oxides must not exceed 100 ppb, as measured in the ambient air as nitrogen dioxide.

(2) **Measurement method.** The levels of nitrogen oxides must be measured as nitrogen dioxide by:

- (a) A FRM based on 40 C.F.R. Part 50, Appendix F; or
- (b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation method.** The interpretation method found in 40 C.F.R. Part 50, Appendix S must be followed.

NEW SECTION

**WAC 173-476-150 Ambient air quality standard for ozone.** (1) **Standard for ozone.** The three-year average of the annual fourth highest daily maximum eight-hour average concentration of ozone in the ambient air must not exceed 0.075 ppmv.

(2) **Measurement method.** The levels of ozone in the ambient air must be measured by:

- (a) A FRM based on 40 C.F.R. Part 50, Appendix D and designated according to 40 C.F.R. Part 53; or
- (b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation method.** The interpretation method found in 40 C.F.R. Part 50, Appendix P must be followed.

NEW SECTION

**WAC 173-476-160 Ambient air quality standards for carbon monoxide.** (1) **Standards for carbon monoxide.**

(a) The eight-hour average concentration of carbon monoxide in the ambient air must not exceed 9 ppmv (10 milligrams per cubic meter) more than once per year.

(b) The one-hour average concentration of carbon monoxide in the ambient air must not exceed 35 ppmv (40 milligrams per cubic meter) more than once per year.

NEW SECTION

**WAC 173-476-900 Appendix A—Table of standards.**

Disclaimer: This table is provided as an overview. See complete rule for more detail.

Pollutant		Averaging Time	Level	Remarks	Measurement Method	Interpretation Method
Particle Pollution	PM-10	24-hour	150 $\mu\text{g}/\text{m}^3$	Not to be exceeded more than once per year averaged over 3 years	40 C.F.R. Part 50, Appendix J	40 C.F.R. Part 50, Appendix K
	PM-2.5	Annual	12.0 $\mu\text{g}/\text{m}^3$	Annual mean, averaged over 3 years	40 C.F.R. Part 50, Appendix L	40 C.F.R. Part 50, Appendix N
24-hour		35 $\mu\text{g}/\text{m}^3$	98th percentile, averaged over 3 years			
Lead		Rolling 3-month average	0.15 $\mu\text{g}/\text{m}^3$	Not to be exceeded	40 C.F.R. Part 50, Appendix G	40 C.F.R. Part 50, Appendix R
Sulfur Dioxide		Annual	0.02 ppmv	Not to be exceeded in a calendar year	40 C.F.R. Part 50, Appendix A or A-1	WAC 173-476-130(3)
		24-hour	0.1 ppm	Not to be exceeded more than once per year		
		3-hour	0.5 ppm	Not to be exceeded more than once per year		
		1-hour	75 ppb	99th percentile of 1-hour daily maximum concentrations, averaged over 3 years		

(2) **Measurement method.** The levels of carbon monoxide in the ambient air must be measured by:

(a) A FRM based on 40 C.F.R. Part 50, Appendix C and designated according to 40 C.F.R. Part 53; or

(b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation method.** An eight-hour average must be considered valid if at least seventy-five percent of the hourly averages for the eight-hour period are available. In the event that only six (or seven) hourly averages are available, the eight-hour average must be computed on the basis of the hours available using six (or seven) as the divisor.

(4) **Rounding of values.** When summarizing data for comparison with the standards, averages must be stated to one decimal place. Comparison of the data with the levels of the standards in ppmv must be made in terms of integers with fractional parts of 0.5 or greater rounding up.

NEW SECTION

**WAC 173-476-170 Monitor siting criteria.** Ambient monitors must be sited as required in 40 C.F.R. Part 58.

NEW SECTION

**WAC 173-476-180 Reference conditions.** (1) All measurements of air quality that are expressed as mass per unit volume (e.g., micrograms per cubic meter) must be corrected to:

(a) A reference temperature of 25°C; and

(b) A reference pressure of 760 millimeters of mercury (1,013.2 millibars (hectopascals)).

(2) Exception for measurements of particulate matter (PM-2.5) and Pb. Measurements of PM-2.5 and Pb must be reported based on the actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

Pollutant	Averaging Time	Level	Remarks	Measurement Method	Interpretation Method
Nitrogen Dioxide	Annual	53 ppb	Annual Mean	40 C.F.R. Part 50, Appendix F	40 C.F.R. Part 50, Appendix S
	1-hour	100 ppb	98th percentile of 1-hour daily maximum concentrations, averaged over 3 years		
Ozone	8-hour	0.075 ppm	Annual fourth-highest daily maximum 8-hr concentration, averaged over 3 years	40 C.F.R. Part 50, Appendix D	40 C.F.R. Part 50, Appendix P
Carbon Monoxide	8-hour	9 ppm	Not to be exceeded more than once per year	40 C.F.R. Part 50, Appendix C	WAC 173-476-160(3)
	1-hour	35 ppm			

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 173-470-010 Purpose.
- WAC 173-470-020 Applicability.
- WAC 173-470-030 Definitions.
- WAC 173-470-100 Ambient air quality standards.
- WAC 173-470-110 Particle fallout standards.
- WAC 173-470-150 Method of measurement.
- WAC 173-470-160 Reporting of data.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 173-474-010 Purpose.
- WAC 173-474-015 Objective.
- WAC 173-474-020 Applicability.
- WAC 173-474-030 Definitions.
- WAC 173-474-100 Air quality standards.
- WAC 173-474-150 Measurement method.
- WAC 173-474-160 Data reporting.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 173-475-010 Purpose.
- WAC 173-475-020 Definitions.
- WAC 173-475-030 Air quality standards.
- WAC 173-475-040 Measurement methods.
- WAC 173-475-050 Reporting of data.

**WSR 13-16-087****PROPOSED RULES****BUILDING CODE COUNCIL**

[Filed August 6, 2013, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-075.

Title of Rule and Other Identifying Information: Amendments to chapter 51-51 WAC, the Washington State Residential Code.

Hearing Location(s): DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 18, 2013, at 10 a.m.

Date of Intended Adoption: November 8, 2013.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-9088, by October 25, 2013.

Assistance for Persons with Disabilities: Contact Peggy Bryden by October 8, 2013, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Corrects an error in chapter 51-51 WAC, Table R302.1(2) Exterior Walls – Dwellings with fire sprinklers, to specify fire resistance rating for walls is determined based on exposure to the outside not both sides.

Makes changes to chapter 51-51 WAC, by amendment of Section R-0302, to provide two exceptions to the requirement for floor assemblies to be fire resistance rated in two family dwellings. If automatic fire sprinklers are present in both dwelling units, or if the required smoke alarms in both dwelling units are interconnected such that the actuation of one of the alarms will activate all alarms in both dwelling units, then the floor assemblies are not required to be fire resistance rated.

Reasons Supporting Proposal: To correct an error in Table R302.1(2) Exterior walls – Dwellings with fire sprinklers.

For consistency with the Building Code: To permit the use of modern technical methods, devices and improvements.

Statutory Authority for Adoption: Chapter 19.27A RCW.

Statute Being Implemented: Chapters 19.27 and 34.05 RCW.

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

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne T. McCaughan, P.O. Box 41011, Olympia, WA 98504-1449, (360) 407-9279; and Enforcement: Local jurisdictions.



No small business economic impact statement has been prepared under chapter 19.85 RCW. This amendment will not result in any cost or impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not a listed agency under RCW 34.05.328 (5)(a)(i). This rule is not considered to be substantive; its function is to provide economic relief in certain instances.

June 14, 2013  
C. Ray Allshouse  
Council Chair

**AMENDATORY SECTION** (Amending WSR 13-04-068, filed 2/1/13, effective 7/1/13)

**WAC 51-51-0302 Section R302—Fire-resistant construction.**

**R302.1 Exterior walls.** Construction, projections, openings and penetrations of exterior walls of dwellings and accessory

buildings shall comply with Table R302.1(1); or *dwellings* equipped throughout with an *automatic sprinkler system* installed in accordance with Section P2904 shall comply with Table R302.1(2).

- EXCEPTIONS:
1. Walls, projections, openings or penetrations in walls perpendicular to the line used to determine the fire separation distance.
  2. Walls of dwellings and accessory structures located on the same lot.
  3. Detached tool sheds and storage sheds, playhouses and similar structures exempted from permits are not required to provide protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.
  4. Detached garages accessory to a dwelling located within 2 feet (610 mm) of a lot line are permitted to have roof eave projections not exceeding 4 inches (102 mm).
  5. Foundation vents installed in compliance with this code are permitted.

**TABLE R302.1(1)  
EXTERIOR WALLS**

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	Fire-resistance rated	1-hour tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	< 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Projections	Fire-resistance rated	1 hour on the underside <sup>a, b</sup>	≥ 2 feet to < 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Openings in walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area per story	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 5 feet
		None required	5 feet

For IS: 1 foot = 304.8 mm. N/A = Not Applicable

((a-)) <sup>a</sup> Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave if fire blocking is provided from the wall top plate to the underside of the roof sheathing.

((b-)) <sup>b</sup> Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave provided no gable vent openings are installed.

**Table R302.1(2)  
Exterior Walls—Dwellings with Fire Sprinklers**

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	Fire-resistance rated	1-hour tested in accordance with ASTM E 119 or UL 263 with exposure from <del>((both-sides))</del> <u>the outside</u>	0 feet
	Not fire-resistance rated	0 hours	3 feet <sup>a</sup>

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Projections	Fire-resistance rated	1 hour on the underside <sup>b, c</sup>	2 feet <sup>a</sup>
	Not fire-resistance rated	0 hours	3 feet
Openings in walls	Not allowed	N/A	< 3 feet
	Unlimited	0 hours	3 feet <sup>a</sup>
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet <sup>a</sup>

For IS: 1 foot = 304.8 mm. N/A = Not Applicable

- a For residential subdivisions where all dwellings are equipped throughout with an automatic sprinkler system installed in accordance with P2904, the fire separation distance for nonrated exterior walls and rated projections shall be permitted to be reduced to 0 feet, and unlimited unprotected openings and penetrations shall be permitted, where the adjoining lot provides an open setback yard that is 6 feet or more in width on the opposite side of the property line.
- b Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave if fire blocking is provided from the wall top plate to the underside of the roof sheathing.
- c Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave provided no gable vent openings are installed.

- 1. Automatic fire sprinklers are installed in accordance with appendix R in both dwelling units;  
or
- 2. All required smoke alarms in both dwelling units are interconnected in such a manner that the actuation of one alarm will activate all alarms in both dwelling units.

**R302.2.1 Continuity.** The fire-resistance-rated wall or assembly separating townhouses shall be continuous from the foundation to the underside of the roof sheathing, deck or slab. The fire-resistance rating shall extend the full length of the wall or assembly, including wall extensions through and separating attached enclosed accessory structures.

Where a story extends beyond the exterior wall of a story below:

- 1. The fire-resistance-rated wall or assembly shall extend to the outside edge of the upper story; or
- 2. The underside of the exposed floor-ceiling assembly shall be protected as required for projections in Section R302.

**R302.2.4 Structural independence.** Each individual townhouse shall be structurally independent.

- EXCEPTIONS:
- 1. Foundation supporting exterior walls or common walls.
  - 2. Structural roof and wall sheathing from each unit may be fastened to the common wall framing.
  - 3. Nonstructural wall and roof coverings.
  - 4. Flashing at termination of roof covering over common wall.
  - 5. Townhouses separated by a common 1-hour fire-resistance-rated wall as provided in Section R302.2.
  - 6. Floor sheathing may fasten to the floor framing of both units.

**R302.3.1 Supporting construction.** When floor assemblies are required to be fire-resistance rated by Section R302.3, the supporting construction of such assemblies shall have an equal or greater fire-resistance rating.

EXCEPTION: The supporting construction is not required to be fire-resistance rated where:

**WSR 13-16-088**  
**PROPOSED RULES**  
**STATE BOARD OF EDUCATION**

[Filed August 6, 2013, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-065.

Title of Rule and Other Identifying Information: Charter schools—Annual report by authorizer.

Hearing Location(s): ESD 105, 33 South 2nd Avenue, Yakima, WA 98902-3486, on September 11, 2013, at 2:15 p.m.

Date of Intended Adoption: September 11, 2013.

Submit Written Comments to: Jack Archer, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, e-mail jack.archer@k12.wa.us, fax (360) 586-2357, by September 4, 2013.

Assistance for Persons with Disabilities: Contact Denise Ross by September 6, 2013, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 28A.710.-100 enumerates the powers and duties of charter authorizers. Subsection (4) requires each charter authorizer to submit an annual report to the state board of education (SBE) according to a timeline, content and format specified by the board. Rule making is needed to set the annual date by which the report must be submitted, to specify the information to be submitted, as necessary, and to establish the form and manner in which the report must be submitted.

Anticipated effects of the proposed rules are to clarify the requirements for authorizer reports under this section and to ensure that the SBE information needed to carry out its duties for oversight of school district authorizers under RCW 28A.710.120, and to meet the requirement of RCW 28A.710.250 to submit an annual report on the state's charter schools for the preceding school year to the governor, legislature and general public.

Specific effects of the proposed rules include:

- Set a due date of November 1 for the annual authorizer reports, starting in 2014.
- Require the SBE to develop and post a standard form to be used in submitting the authorizer reports.
- Require the SBE to post the completed reports on its web site.
- Add a requirement for an executive summary.
- Provide for certain additional information about charter authorizers and their charter portfolios to be included in the reports.
- Add detail and clarity to the information required to be submitted on the performance of operating charter schools overseen by the authorizer, including the

academic progress of each school based on the authorizer's performance framework.

Statutory Authority for Adoption: RCW 28A.710.100.  
 Statute Being Implemented: Chapter 28A.710 RCW (Initiative 1240).

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Archer, Old Capitol Building, 600 Washington Street S.E., Olympia, WA; Implementation and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street S.E., Olympia, WA.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

**SCHOOL DISTRICT FISCAL IMPACT STATEMENT**

<b>WSR:</b>	<b>Title of Rule:</b> I-1240 Section 209 Charter Schools Authorizer Approval Process	<b>Agency:</b> SDF - School District Fiscal Impact - SPI
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**Part I: Estimates:  
 Estimated Expenditures From:**

ACCOUNT	FY 2014	FY 2015	2013-15	2015-17	2017-19
001-01	39,000	34,000	73,000	68,000	68,000
(Costs are per authorizer)					
<b>Total \$</b>	39,000	34,000	73,000	68,000	68,000

**Estimated Capital Impact:** No estimated capital impact.

**Part II: Narrative Explanation:**

**II. A – Brief Description Of What the Measure Does That Has Fiscal Impact:** *Briefly describe by section, the significant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

School districts that chose [choose] to become authorizers will be required to review and approve charter school applications, develop charter school policies and practices, ongoing charter school oversight and evaluation, and annual reporting to the SBE would include a report on academic and financial performance of each charter school. In order to complete the report, authorizers must play an active role in the tasks listed above, therefore the cost of performing those tasks are included in this estimate.

**II. B – Cash Receipts Impact:** *Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

Cash receipts due to charter school authorizers amount to four percent of the overall allocation paid to each charter school. The overall amount is indeterminate, because we have no way of accurately projecting all of the variables that would generate a charter school's allocation. These receipts

can be used by charter school authorizers to offset, either partially or entirely, the expenditures outlined in the section below.

**II. C – Expenditures:** *Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

This fiscal impact statement does not project the total amount of charter school authorizers that will operate. Therefore the costs assumed are per authorizer per school year.

Per authorizer, per school year, performing these tasks would require three hundred twenty hours of administrator time, one hundred twenty hours of classified time, and \$5,000 per year in additional cost to prepare statements according to generally accepted accounting principles which is a more stringent reporting baseline than the school district accounting manual.

An additional \$5,000 of legal costs for application and policy review would be required (per authorizer) for the first year only.

**Part III: Expenditure Detail:**

**III. A – Expenditures by Object or Purpose.**

Expenditures are detailed per authorizer per year.

Total FTE	0.3
Salaries and Wages	18,363
Employee Benefits	9,637
Personal Service Contracts	5,640
Goods and Services	360

Fiscal Impact Statement:

Travel Total	34,000
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**Part IV: Capital Budget Impact:** None.

A copy of the statement may be obtained by contacting Thomas J. Kelly, Old Capitol Building, 600 Washington Street S.E., Olympia WA, phone (360) 725-6031, e-mail thomas.kelly@k12.wa.us.

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

August 6, 2013  
 Ben Rarick  
 Executive Director

NEW SECTION

**WAC 180-19-210 Annual report by authorizer.** (1)

Each authorizer must, no later than November 1st of each year starting in 2014, submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its web site by September 1st of each year a standard form which must be used, and instructions which must be followed, by each authorizer in making its report. The completed report must be sent via electronic mail to sbe@k12.wa.us and shall be posted on the board's web site.

(2) The report must include:

- (a) The date of authorizer approval by the board;
- (b) The names and job titles of district personnel having principal authorizing responsibilities, with contact information for each;
- (c) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;
- (d) The authorizer's strategic vision for chartering, as submitted to the state board under WAC 180-19-030 (3)(a), and its assessment of progress toward achieving that vision;
- (e) The status of the authorizer's charter school portfolio, identifying all charter schools in each of the following categories:
  - (i) Approved but not yet open, including, for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the governing board, and the planned date for opening;
  - (ii) Operating, including, for each, location; grades operated; enrollment, in total and by grade, and at-risk students served, in total and as percent of enrollment;
  - (iii) Charter renewed, with date of renewal;

- (iv) Charter transferred to another authorizer during the prior year, with date of transfer;
- (v) Charter revoked during the prior year, with date of and reasons for revocation;
- (vi) Voluntarily closed;
- (vii) Never opened, with no planned date for opening.
- (f) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a) through (f), as applicable by grade, in absolute values and in relation to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in statistical relation to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups, including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(g) The financial performance of each operating charter school overseen by the authorizer, based on the indicators and measures of financial performance and sustainability in the authorizer's performance framework;

(h) The authorizer's operating costs and expenses for the prior year for fulfilling the responsibilities of an authorizer as enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(i) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased and an itemized accounting of the revenue received from the schools for the services and the actual costs of these services to the authorizer.

**WSR 13-16-093**

**PROPOSED RULES**

**WASHINGTON STATE UNIVERSITY**

[Filed August 7, 2013, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-03-136.

Title of Rule and Other Identifying Information: Chapter 504-45 WAC, Public records.

Hearing Location(s): Lighty 403, WSU Pullman, Pullman, Washington, on September 26, 2013, at 4:00 p.m.

Date of Intended Adoption: November 22, 2013.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail [prf.forms@wsu.edu](mailto:prf.forms@wsu.edu), fax (509) 335-3969, by September 26, 2013.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by September 24, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the procedures regarding requesting public records from Washington State University.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Linda A. Nelson, Public Records Coordinator, Public Records Office, Information Technology 3013, Pullman, WA 99164-1233, (509) 335-3928; Implementation and Enforcement: Kathryn R-Barnard-La Pointe, Executive Director, University Communications, French Administration 446M, Pullman, WA 99164-1040, (509) 335-8055.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

August 7, 2013

Ralph T. Jenks, Director  
Procedures, Records, and Forms  
University Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

**WAC 504-45-020 Agency description—Contact information—Public records officer.** (1) Washington State University is an institution of higher education, authority for which is located in chapter 28B.30 RCW. The administrative offices of the university are located at the university's main campus at Pullman, Washington. Regional campuses are located in Spokane, Tri-Cities, and Vancouver, Washington. Agricultural research centers are located at Mt. Vernon, Prosser, Puyallup, Vancouver and Wenatchee, Washington. Cooperative extension offices are maintained in the county seats of all counties in the state. ~~((The Intercollegiate College of Nursing is located in Spokane, Washington. Learning Centers are located in Longview, Aberdeen, Goldendale, Wenatchee, Port Hadlock, Tacoma, Mt. Vernon, Yakima and Walla Walla, Washington.))~~ The university also has operations offices in Seattle and Olympia, Washington.

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request should contact the university's public records ~~((office))~~ office located at the Pullman administrative offices. Current contact information and additional informa-

tion regarding release of public records can be found on the university web site at <http://www.wsu.edu>.

(3) The public records officer will oversee compliance with the act but another university 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 university will provide the "fullest assistance" to requestors; 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 university.

AMENDATORY SECTION (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

**WAC 504-45-030 Availability of public records.** (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the university. For the purposes of this chapter, the normal business hours for the public records office shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding the university's holidays and scheduled and emergency closure periods. Records must be inspected at the offices of the university.

(2) Index of records. An index of final orders, declaratory orders, interpretive statements, and policy statements entered after June 30, 1990, is available at the office of the university's rules coordinator at the Pullman campus. The university will post links to many of these records on its web site at <http://www.wsu.edu>.

(3) Organization of records. The university will maintain its records in a reasonably organized manner. The university will take reasonable actions to protect records from damage and disorganization. A requestor shall not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the university web site at [www.wsu.edu](http://www.wsu.edu). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the university should make the request in writing on the university's request form, or by letter, fax, or e-mail addressed to the public records officer ~~((and including))~~ or designee. The following information must be included in the request:

- (i) Name of ~~((requestor))~~ the person requesting records;
- (ii) Mailing address of requestor;
- (iii) Other contact information, including telephone number and any e-mail address;
- (iv) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (v) The date 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, standard photocopies will be provided at a rate of no more than fifteen cents per page. The university may charge the current approved rate for scanned images of paper records if images

are requested. A requestor may refer to the university web site at <http://www.wsu.edu> for current rates.

(c) A form is available for use by requestors at the ~~((office of the))~~ public records ~~((officer))~~ office and on the university's web site at <http://www.wsu.edu>.

(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.

**AMENDATORY SECTION** (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

**WAC 504-45-040 Processing of public records requests—General.** (1) Providing "fullest assistance." The university 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 the 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) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone, e-mail or mail. Based upon that clarification, the public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request.

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer or designee to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. 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.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should

be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university 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 university to copy.

(b) The requestor must claim or review the assembled records within thirty days of the university's notification to him or her that the records are available for inspection or copying. The university will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the university to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the university may close the request. 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.

(7) Providing copies of records. After inspection is complete, the public records officer or designee shall make any copies of records requested by the requestor or arrange for copying.

(8) 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 thirty 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.

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

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate to the requestor that the university has closed the request.

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional responsible documents existing at the time of the request, it will promptly inform the requestor of the additional documents and will make them available for inspection or provide copies upon payment on an expedited basis.

AMENDATORY SECTION (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

**WAC 504-45-050 ((Reserved)) 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 or designee will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to data bases. With the consent of the requestor, the university may provide customized access under RCW 43.41A.130 if the record is not reasonably locatable or not reasonably translatable into the format requested. The university may charge a fee consistent with RCW 43.41A.130 for such customized access.

AMENDATORY SECTION (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

**WAC 504-45-070 Costs of providing copies of public records.** (1) Costs for ((paper)) copies of paper records. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page or scanned images at the current approved rate per image. Before beginning to make the copies or images, the public records officer or designee may require a deposit of up to ten 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 university will not charge sales tax when it makes copies of public records. The university may charge actual costs for special arrangements necessary for providing copies of records when required by the requestor, e.g., costs of color copying.

(2) Costs of mailing. The university may also charge actual costs of mailing, including the cost of the shipping container.

(3) Payment. Payment may be made by cash, check or money order to the university.

**WSR 13-16-094  
PROPOSED RULES  
OFFICE OF  
FINANCIAL MANAGEMENT**

[Filed August 7, 2013, 9:54 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-19-205 Upon return from exempt service, how is the

employee's salary set?, 357-28-035 What must be addressed in the employer's salary determination policy?, 357-28-055 How is the periodic increment date determined for a general government employee?, 357-28-056 How is the periodic increment date determined for a higher education employee?, 357-28-060 When does an employee receive an increment increase?, 357-28-070 Can an employer adjust the time and amount of increment increases?, 357-28-075 Can an employer accelerate or defer increment increases based on performance?, 357-28-082 Is step M on the salary schedule different than other salary steps?, 357-28-084 Can an employee be appointed to step M upon demotion?, 357-28-086 When may an employee progress to step M of the salary range?, 357-28-088 If an employee accepts a new appointment will the time spent at step L count towards the six years to qualify for step M in the new position?, 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons?, 357-28-110 Must an employee who is promoted to a position in a class with a higher salary range receive a salary increase?, 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?, 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?, 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?, 357-28-165 When an exempt position is converted to classified, how is the base salary of the incumbent determined?, and 357-13-090 How is an employee affected when his/her position is reallocated?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on September 12, 2013, at 8:30 a.m.

Date of Intended Adoption: September 12, 2013.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail [Kristie.wilson@ofm.wa.gov](mailto:Kristie.wilson@ofm.wa.gov), fax (360) 586-4694, by September 5, 2013. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM, by September 5, 2013, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2013-2015 operating budget that was passed by the legislature provides for a longevity step to be added to the state salary schedule effective July 1, 2013. It provides for an approximate 2.5 percent increase. Employees who have been at the top step (step L) in the same salary range for six years will move to the new step M.

We have amended two WACs since the emergency filing effective July 1, 2013. We have added language to WAC 357-28-088 which clarifies that if a new appointment is due to an employee accepting a demotion in lieu of layoff or a layoff option to a position with a lower salary range maximum then time spent at step L in the previous position will count towards the six years to qualify for step M in the new

salary range. We have added language to WAC 357-28-035 which addresses nurses' special pay salary schedules.

Statutory Authority for Adoption: Chapter 41.06 RCW.  
 Statute Being Implemented: RCW 41.06.150.

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

Name of Agency Personnel Responsible for Drafting:  
 Kristie Wilson, 400 Insurance Building, (360) 902-0483.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

August 7, 2014 [2013]  
 Sandi Stewart  
 Acting Assistant Director  
 State Human Resources

**AMENDATORY SECTION** (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

**WAC 357-13-090 How is an employee affected when his/her position is reallocated?**

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p> <p>Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed <del>((the top))</del> step <u>L</u> of the range as provided in WAC 357-28-115.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list; and has his/her salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		



AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-205 Upon return from exempt service, how is the employee's salary set?** The employee's base salary must not be less than the employee's previous base salary in classified service, adjusted according to any changes to salary range that occurred while the employee was in exempt service.

If the employee was at step L at the time they accepted the exempt appointment and they are returned to step L of the same pay range, time spent in exempt service will count towards the six years to qualify for step M.

AMENDATORY SECTION (Amending WSR 05-21-061, filed 10/13/05, effective 11/15/05)

**WAC 357-28-035 What must be addressed in the employer's salary determination policy?** The employer's salary determination policy must minimally address the following:

- (1) Setting base salary for new employees;
- (2) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a position in a new class;
- (3) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a permanent position while in a nonpermanent appointment;
- (4) Setting base salary in accordance with WAC 357-28-140 when an employee transfers to a new position;
- (5) Setting base salary when an employee ~~((accepts a layoff option, accepts a demotion in lieu of layoff,))~~ is appointed from an internal or statewide layoff list ~~((, or is reallocated to a position with a lower range and the employee's previous base salary is not within the salary range of the new position));~~
- (6) Setting base salary when an employee is reallocated to a position with a lower salary range and the employee's previous base salary is above step L of the new salary range as permitted in WAC 357-28-120. Under no circumstance should an employee's salary exceed their previous base salary;
- (7) Setting base salary when an employee demotes for reasons other than accepting a demotion in lieu of layoff or accepting a demotion when a position is reallocated;
- ~~((7))~~ (8) Setting base salary when an employee is reverted following a voluntary demotion; ~~((and~~
- ~~(8))~~ (9) Authorizing premiums for recruitment and retention as provided in WAC 357-28-095 and 357-28-100; and
- (10) Setting base salary and progression based on recruitment and retention rather than years of experience for the nurse special pay salary schedules, if allowed by the employer.

AMENDATORY SECTION (Amending WSR 10-17-062, filed 8/13/10, effective 9/15/10)

**WAC 357-28-055 How is the periodic increment date determined for a general government employee?** (1) For a general government employee appointed to a position before

July 1, 2005, the employee's periodic increment date as of June 30, 2005 is retained.

(2) For a general government employee appointed to a position on or after July 1, 2005 whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a general government employee appointed to a position on or after July 1, 2005 whose base salary is set above the minimum but below ~~((the maximum))~~ step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) A general government employee appointed to a position on or after July 1, 2005, whose base salary is set at ~~((the maximum))~~ step L of the range will not have a periodic increment date set. If the employee later receives a new appointment, the periodic increment date will be set at that time, as described in this section.

(5) Once a general government employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 and 357-28-075; or

(b) The periodic increment date is adjusted for leave without pay in accordance with WAC 357-31-345.

AMENDATORY SECTION (Amending WSR 06-11-048, filed 5/11/06, effective 6/12/06)

**WAC 357-28-056 How is the periodic increment date determined for a higher education employee?** (1) For a higher education employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005 is retained.

(2) For a higher education employee appointed to a position on or after July 1, 2005 whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a higher education employee appointed to a position on or after July 1, 2005 whose base salary is set above the minimum but below ~~((the maximum))~~ step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) Once a higher education employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 and 357-28-075; or

(b) The employee is appointed to another position with a different salary range maximum. Upon subsequent appointment, the provisions of subsection (2) and (3) of this section apply.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-060 When does an employee receive an increment increase?** Unless adjusted under the provisions of WAC 357-28-070 or 357-28-075, an employee must receive a two step increase to base salary on the periodic increment date. Increment increases continue until the employee reaches ~~((the top))~~ step L of the salary range.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

**WAC 357-28-070 Can an employer adjust the timing and amount of increment increases?** Employers may adjust the timing and/or amount of regularly scheduled increment increases stated in WAC 357-28-060 by resetting the periodic increment date based on the nature of the work or training requirements. This may apply to all employees, employees in specific positions, all employees allocated to a class, or all employees in an organizational unit. This may happen as long as employees receive minimally an increase of two steps annually until their salary reaches ~~((the top))~~ step L of the salary range.

AMENDATORY SECTION (Amending WSR 05-21-061, filed 10/13/05, effective 11/15/05)

**WAC 357-28-075 Can an employer accelerate or defer increment increases based on performance?** Employers who have received performance management confirmation from the director may in accordance with the employer's policy on performance-based increments:

(1) Accelerate the timing and/or amount of regularly scheduled increment increases stated in WAC 357-28-060 by advancing the periodic increment date for individual employees. This may only happen if employees receive an increase of at least two steps every twelve months from the periodic increment date until their salary reaches ~~((the top))~~ step L of the salary range. When the periodic increment date is advanced, the employee has a new periodic increment date.

(2) Defer scheduled increment increases by postponing the periodic increment date for individual employees whose performance is less than satisfactory. When the periodic increment date is postponed to a future date, the employee has a new periodic increment date.

NEW SECTION

**WAC 357-28-082 Is step M on the salary schedule different than other salary steps?** Step M is a longevity step. An employee cannot be appointed to step M upon initial hire or progress to step M upon promotion.

NEW SECTION

**WAC 357-28-084 Can an employee be appointed to step M upon demotion?** An employee cannot be appointed to step M upon demotion (voluntary or involuntary) unless the employee was at step M of the salary range from which the employee is demoting or the employee was previously at step M in the salary range of the class the employee is demoting to.

NEW SECTION

**WAC 357-28-086 When may an employee progress to step M of the salary range?** (1) If an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L. The progression

to step M is regardless of what has transpired in the six years since the employee was appointed to step L, provided that the employee is at step L in the same pay range as the pay range the employee was in at the beginning of the six-year period.

(2) With director approval, higher education institutions may make all movements to step M effective:

(a) The first of the current month for actions occurring between the first and the fifteenth of the month; or

(b) The first of the following month for actions occurring between the sixteenth and the end of the month.

NEW SECTION

**WAC 357-28-088 If an employee accepts a new appointment will the time spent at step L count towards the six years to qualify for step M in the new position?** If an employee accepts a new appointment to a position which is the same pay range as the previous position, the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee accepts a new appointment to a position which is a different pay range as the previous position, the time at step L in the previous position will not count towards the six years to qualify for step M in the new salary range. An exception to this is if the new appointment is due to an employee accepting a demotion in lieu of layoff or a layoff option to a position with a lower salary range maximum. In that case, the time spent at step L in the previous position will count towards the six years to qualify for step M in the new salary range.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons?** The employer may adjust an employee's base salary up to step L within the salary range to address issues that are related to recruitment, retention or other business related reason, such as equity, alignment, or competitive market conditions.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-110 Must an employee who is promoted to a position in a class with a higher salary range receive a salary increase?** An employee who is promoted to a position in a class with a higher salary range must receive a minimum increase of two steps not to exceed ~~((the top))~~ step L of the salary range. The employer may grant higher increases not to exceed step L if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation~~((:));~~

(2) The increase is necessary for internal salary alignment, retention of the employee, or other documented business needs~~((:));~~ or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?** An employee occupying a position that is reallocated to a class with a higher salary range must receive at least two steps not to exceed ~~((the top))~~ step L of the salary range in accordance with WAC 357-28-110.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?** An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to his/her previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to ~~((the maximum))~~ step L of the salary range for the reallocated position. The employee's base salary may be set at step M or higher than the range maximum, but not exceeding the previous base salary, if allowed by the employer's salary determination policy.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?** The base salary of an employee appointed to a position due to a layoff action must be determined as follows:

(1) An employee who accepts a layoff option to a different position with the same salary range keeps the same base salary.

(2) An employee who accepts a demotion in lieu of layoff or accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to ~~((the new range maximum. The employee's base salary may be set higher than the range maximum, but not exceeding the previous base salary, if allowed by the employer's salary determination policy))~~ step L of the new salary range. If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range.

(3) An employee who is appointed from an internal or statewide layoff list to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

(4) An employee who is appointed from an internal or statewide layoff list to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

**WAC 357-28-165 When an exempt position is converted to classified, how is the base salary of the incumbent determined?** If an exempt position is converted to classified status under the provisions of WAC 357-19-225, the base salary of the incumbent must not be less than the exempt salary at the time of conversion. If the employee's salary at the time of conversion exceeds the maximum of the salary range, the employee's base salary must be set outside the range in accordance with WAC 357-28-040.

If the exempt salary is equal to step L of the classified position and the employee has been at that salary level for six or more years, the employee will progress to step M upon conversion. If the employee has been at that salary level for less than six years, the employee will progress to step M when the total amount of time equals six years.

If the exempt salary is between step L and step M of the new classified salary range and the employee has been at that salary for six or more years, the employee will be placed at step M upon conversion. If the employee has been at that salary level for less than six years, the employee will progress to step M when the total amount of time equals six years.

If the exempt salary is equal to step M of the new classified salary range, the employee will be placed at step M upon conversion.

## WSR 13-16-096

### PROPOSED RULES

### HEALTH CARE AUTHORITY

[Filed August 7, 2013, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: WAC 182-500-0010 Medical assistance definitions—A, 182-500-0045 Medical assistance definitions—H, 182-500-0070 Medical assistance definitions—M, 182-500-0090 Medical assistance definitions—Q, 182-500-0095 Medical assistance definitions—R, 182-500-0100 Medical assistance definitions—S, 182-505-0211 WAH—Foster care, 182-506-0010 Medical assistance units for MAGI-based WAH programs, 182-506-0015 Medical assistance units for non-MAGI-based WAH programs, 182-509-0001 Countable income for Washington apple health programs, 182-509-0220 Washington apple health—How resources are considered, 182-509-0300 Modified adjusted gross income (MAGI), 182-509-0305 MAGI income—Persons subject to the MAGI methodology, 182-509-0310 MAGI income—Timing of income, 182-509-0315 MAGI income—Ownership of income, 182-509-0320 MAGI income—Noncountable income, 182-509-0325 MAGI income—Unearned income, 182-509-0330 MAGI income—Earned income, 182-509-0335 MAGI income—Educational benefits, 182-509-0340 MAGI income—Native American benefits and payments, 182-509-0345 MAGI income—Income from employment and training program, 182-509-0350 MAGI income—Needs-based assistance from

other agencies or organizations, 182-509-0355 MAGI income—Gifts and inheritances, 182-509-0360 MAGI income—How a child's income is counted, 182-509-0365 MAGI income—Self-employment income, 182-509-0370 MAGI income—How self-employment income is counted, 182-509-0375 MAGI income—Lump sums, 182-520-0005 WAH fraud referrals and overpayments, and 182-520-0010 WAH overpayments resulting from an administrative hearing.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on September 10, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 11, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on September 10, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 3, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates the HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health (WAH)).

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Jessie Minier, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1501.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

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.

August 7, 2013  
Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0010 Medical assistance definition—**

**A. "Administrative renewal"** means the agency uses verification from electronically available income data sources to verify and recertify a person's Washington apple health benefits for a subsequent certification period. A case is administratively renewed when the person's self-attested income is reasonably compatible (as defined in WAC 182-500-0095) with the information available to the agency from the electronic data sources and the person meets citizenship, immigration, Social Security number, and age requirements.

**"Agency"** means the Washington state health care authority (HCA), created pursuant to chapter 41.05 RCW.

**"Agency's designee"** means the Washington state department of social and health services (DSHS), created pursuant to chapter 43.20A RCW.

**"Allowable costs"** are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients are not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

**"Alternative benefits plan"** means the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

**"Ancillary services"** means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

**"Apple health for kids"** is the umbrella term for health care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs or Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. (~~Children who may be eligible for medical assistance but who are not included under the apple health for kids umbrella are described in WAC 388-505-0210.~~) Apple health for kids programs are included in the array of health care programs available through Washington apple health (WAH).

**"Attested income"** means a self-declared statement of a person's income made under penalty of perjury to be true. (See also "self-attested income.")

**"Authorization"** means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

**"Authorized representative"** means a family member, friend, organization or someone acting responsibly on behalf

of a person who is designated by the person to act on his or her behalf in all matters relating to an application or renewal of Washington apple health or other ongoing communications with agency or its designee. The authorization must be made in writing and signed by the person unless the person's medical condition prevents such written authorization. Authority to act on behalf of an applicant or beneficiary under state law can substitute for the person's authorization. The power to act as an authorized representative ends when the person or a court-appointed guardian of the person informs the agency or its designee that the representative is no longer authorized to act on his or her behalf, or when the agency learns of a change in the legal authority upon which the authorization is based.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0045 Medical assistance definitions—**

**H. "Health benefit exchange"** means the public-private partnership created pursuant to chapter 43.71 RCW.

**"Health insurance premium tax credit (HIPTC)"** is a premium tax credit that is refundable and can also be paid in advance from the Internal Revenue Service to a taxpayer's insurance company to help cover the cost of premiums for a taxpayer enrolled in a qualified health plan (QHP) through the health benefit exchange. This tax credit is specified in Section 36B of the Internal Revenue Code of 1986.

**"Health maintenance organization (HMO)"** means an entity licensed by the office of the insurance commissioner to provide comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the agency on a prepaid capitation risk basis.

**"Health care professional"** means a provider of health care services licensed or certified by the state in which they practice.

**"Health care service category"** means a grouping of health care services listed in the table in WAC ((388-501-0060)) 182-501-0060. A health care service category is included or excluded depending on the client's medical assistance benefits package.

**"Home health agency"** means an agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

**"Hospital"** means an entity that is licensed as an acute care hospital in accordance with applicable state laws and rules, or the applicable state laws and rules of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit or a psychiatric hospital.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-500-0070 Medical assistance definitions—**

**M. "Medicaid"** is the federal aid ((Title XIX)) program under Title XIX of the Social Security Act under which ((medical)) health care is provided to eligible persons.

**"Medical assistance"** ((for the purposes of chapters 388-500 through 388-561 WAC, means the various)) is the term the agency and its predecessors used prior to the implementation of the Affordable Care Act in Washington state to mean all federal and/or state-funded health care programs administered by the agency or ((the agency's)) its designee that ((provide federally funded and/or state-funded health care benefits to eligible clients)) are now known as Washington apple health.

**"Medical assistance administration (MAA)"** is the former organization within the department of social and health services authorized to administer the federally funded and/or state-funded health care programs that are now administered by the agency, formerly the medicaid purchasing administration (MPA), of the health and recovery services administration (HRSA).

**"Medical care services (MCS)"** means the limited scope ((of)) health care ((medical)) program financed by state funds for clients who meet the incapacity criteria defined in chapter 182-508 WAC or who are eligible for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program.

**"Medical consultant"** means a physician employed or contracted by the agency or the agency's designee.

**"Medical facility"** means a medical institution or clinic that provides health care services.

**"Medical institution"** See "institution" in WAC 182-500-0050.

**"Medical services card"** means the card issued by the agency at the initial approval of a person's Washington apple health (WAH) benefit. The card identifies the person's name and medical services identification number, but is not proof of eligibility for WAH. The card may be replaced upon request if it is lost or stolen, but is not required to access health care through WAH.

**"Medically necessary"** is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

**"Medically needy (MN) or medically needy program (MNP)"** is the state- and federally funded health care program available to specific groups of persons who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income and/or resources above the CN standard may also qualify for MN.

**"Medicare"** is the federal government health insurance program for certain aged or disabled persons under Titles II and XVIII of the Social Security Act. Medicare has four parts:

(1) **"Part A"** - Covers medicare inpatient hospital services, post-hospital skilled nursing facility care, home health services, and hospice care.

(2) **"Part B"** - The supplementary medical insurance benefit (SMIB) that covers medicare doctors' services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

(3) **"Part C"** - Covers medicare benefits for clients enrolled in a medicare advantage plan.

(4) **"Part D"** - The medicare prescription drug insurance benefit.

**"Medicare assignment"** means the process by which a provider agrees to provide services to a medicare beneficiary and accept medicare's payment for the services.

**"Medicare cost-sharing"** means out-of-pocket medical expenses related to services provided by medicare. For medical assistance clients who are enrolled in medicare, cost-sharing may include Part A and Part B premiums, co-insurance, deductibles, and copayments for medicare services. See chapter 182-517 WAC for more information.

**"Minimum essential coverage"** means coverage defined in Section 5000A(f) of Subtitle D of the Internal Revenue Code of 1986, as added by Section 1401 of the Affordable Care Act.

**"Modified adjusted gross income (MAGI)"** means the adjusted gross income (as determined by the Internal Revenue Service under the Internal Revenue Code of 1986) increased by:

(1) Any amount excluded from gross income under Section 911;

(2) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(3) Title II Social Security income or Tier 1 railroad retirement income.

#### NEW SECTION

**WAC 182-500-0090 Medical assistance definitions—**  
**Q. "Qualified health plan (QHP)"** means a health insurance plan that has been certified by the Washington health benefit exchange to meet at minimum the standards described in 45 C.F.R. Part 156, Subpart C and RCW 43.71.065 and offered in accordance with the process described in 45 C.F.R. Part 155, Subpart K and RCW 43.71.065.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0095 Medical assistance definitions—**  
**R. "Reasonably compatible"** means the amount of a person's self-attested income (as defined in WAC 182-500-0100) and the amount of a person's income verified via electronic data sources are either both above or both below the applicable income standard for Washington apple health (WAH). When self-attested income is less than the standard for WAH, but income from available data sources is more than the WAH standard, or when the self-attested income cannot be verified via electronic data sources, the self-attested income is considered not reasonably compatible.

**"Regional support network (RSN)"** means a single or multiple-county authority or other entity operating as a pre-paid health plan through which the agency or the agency's designee contracts for the delivery of community outpatient and inpatient mental health services system in a defined geographic area.

**"Retroactive period"** means approval of medical coverage for any or all of the retroactive period. A client may be eligible only in the retroactive period or may have both current eligibility and a separate retroactive period of eligibility approved.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0100 Medical assistance definitions—**  
**S. "Self-attestation"** means a person's written, verbal, or electronic declaration of his or her income and/or circumstances made under penalty of perjury, confirming a statement to be true. (See also "attested income.")

**"Spendedown"** is a term used in the medically needy (MN) program and means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the agency. See WAC ((388-519-0110)) 182-519-0110.

**"Spouse"** means, for the purposes of ((~~medicaid~~)) Washington apple health (WAH) programs for which federal funding is available, a person who is a husband or wife legally married to a person of the opposite sex. Washington state recognizes other states' determinations of legal and common-law marriages between two persons of the opposite gender. For state-funded only WAH programs, a person who is a husband or wife legally married to a person of the same sex.

(1) **"Community spouse"** means a person who:

(a) Does not reside in a medical institution; and

(b) Is legally married to a client who resides in a medical institution or receives services from a home and community-based waiver program. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(2) **"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and is also eligible for SSI.

(3) **"Essential spouse"** means a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) for a client in December 1973, who continues to live in the home and remains married to the client.

(4) **"Ineligible spouse"** means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and who has not applied or is not eligible to receive SSI.

(5) **"Institutionalized spouse"** means a legally married person who has attained institutional status as described in chapter ((388-513)) 182-513 WAC, and receives services in a medical institution or from a home or community-based waiver program described in chapter ((388-515)) 182-515 WAC. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(6) **"Nonapplying spouse"** means an SSI-related person's husband or wife, who has not applied for medical assistance.

**"SSI-related"** means an aged, blind or disabled person not receiving an SSI cash grant.

**"State supplemental payment (SSP)"** is a state-funded cash benefit for certain individuals who are either recipients of the Title XVI supplemental security income (SSI) program or who are clients of the division of developmental disabilities. The SSP allotment for Washington state is a fixed amount of twenty-eight million nine hundred thousand dollars and must be shared between all individuals who fall into one of the groups listed below. The amount of the SSP may vary each year depending on the number of individuals who qualify. The following groups are eligible for an SSP:

(1) Mandatory SSP group—SSP made to a mandatory income level client (MIL) who was grandfathered into the SSI program. To be eligible in this group, an individual must have been receiving cash assistance in December 1973 under the department of social and health services former old age assistance program or aid to the blind and disability assistance. Individuals in this group receive an SSP to bring their income to the level they received prior to the implementation of the SSI program in 1973.

(2) Optional SSP group—SSP made to any of the following:

(a) An individual who receives SSI and has an ineligible spouse.

(b) An individual who receives SSI based on meeting the age criteria of sixty-five or older.

(c) An individual who receives SSI based on blindness.

(d) An individual who has been determined eligible for SSP by the division of developmental disabilities.

(e) An individual who is eligible for SSI as a foster child as described in WAC 388-474-0012.

**"Supplemental security income (SSI) program (Title XVI)"** is the federal grant program for aged, blind, and disabled persons, established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

#### NEW SECTION

**WAC 182-505-0211 Washington apple health (WAH)—Foster care.** (1) A child under the age of nineteen is eligible for Washington apple health (WAH) when he or she:

(a) Is in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state; and

(b) Meets Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525.

(2) A child under the age of twenty-one is eligible for WAH when he or she meets:

(a) Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525;

(b) Citizenship or immigration status requirements as described in WAC 182-503-0535;

(c) Social Security number requirements as described in WAC 182-503-0515; and

(d) Is in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state; or

(e) Receives subsidized adoption services through the children's administration; or

(f) Is enrolled in the unaccompanied refugee minor (URM) program as authorized by the office of refugee and immigrant assistance (ORIA); or

(g) Is living in a group home operated or contracted by the juvenile rehabilitation administration; or

(h) Is placed in a foster home or group home through the voluntary placement waiver program managed by the division of developmental disabilities.

(3) A person age nineteen but under age twenty-six is eligible for WAH when he or she:

(a) Was in foster care under the legal responsibility of the state or a federally recognized tribe located within the state on his or her eighteenth birthday, on or after July 22, 2007; and

(b) Meets residency, Social Security number, and citizenship requirements as described in subsection (2) of this section.

(4) A person described in subsections (1) through (3) of this section is not eligible for WAH if he or she is confined to a public institution as defined in WAC 182-500-0050, except:

(a) If he or she is under age twenty-one;

(b) Resides in an institution for mental disease (IMD); and

(c) Meets the institutional status requirements in WAC 182-505-0240.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

#### **WAC 182-506-0010 Medical assistance units (MAU) for MAGI-based Washington apple health programs.**

~~((1) One or more medical assistance units (MAU) is established for individuals living in the same household based on the type of medical program, each individual's relationship to other family members, and the individual's financial responsibility for the other family members.~~

~~(2) Financial responsibility applies only to spouses and to parents, as follows:~~

~~(a) Married persons, living together are financially responsible for each other; and~~

~~(b) Persons who meet the definition of a natural, adoptive, or step-parent described in WAC 388-454-0010 are financially responsible for their unmarried, minor children living in the same household.~~

~~(3) Minor children are not financially responsible for their parents or for their siblings.~~

~~(4) When determining eligibility for family, pregnancy, or children's medical programs, follow the income rules as described in WAC 388-450-0106 (1) through (7). Only one MAU is required when all family members are eligible for categorically needy (CN) medical coverage.~~

~~(5) If a family is not eligible as one MAU for a CN program, separate MAUs are required for family members living in the same household in the following situations:~~

~~(a) A pregnant minor, regardless of whether she lives with her parent(s);~~

~~(b) A child with earned or unearned income;~~

~~(c) A child with resources which make another family member ineligible for medical assistance;~~

~~(d) A child of unmarried parents when both parents reside with the child;~~

~~(e) Each unmarried parent of a child in common, plus any of their children who are not in separate MAUs;~~

~~(f) A caretaker relative that is not financially responsible for the support of the child;~~

~~(6) For a family with multiple MAUs established based on the criteria described in subsection (5) of this section, a parent's:~~

~~(a) Income up to one hundred percent of the federal poverty level (FPL) is allocated to the parent and other members of the parent's MAU. The excess is allocated to their children in separate MAUs.~~

~~(b) Resources are allocated equally to the parent and all persons in the parent's household for whom the parent is financially responsible. This includes family members in separate MAUs.~~

~~(7) The exceptions to the income allocations described in subsection (6) of this section are as follows:~~

~~(a) Only the parent's income actually contributed to a pregnant minor is considered income to the minor.~~

~~(b) A parent's financial responsibility is limited when the minor child is receiving inpatient chemical dependency or mental health treatment. Only the income a parent chooses to contribute to the child is considered available when:~~

~~(i) The treatment is expected to last ninety days or more;~~

~~(ii) The child is in court-ordered, out-of-home care in accordance with chapter 13.34 RCW; or~~

~~(iii) The department determines the parents are not exercising responsibility for the care and control of the child.~~

~~(8) When determining eligibility for an SSI-related medical program, a separate MAU is required for:~~

~~(a) SSI recipients;~~

~~(b) An SSI-related person who has not been found eligible for family medical under this chapter; or~~

~~(c) The purpose of applying medical income standards for an:~~

~~(i) SSI-related applicant whose spouse is not related to SSI or is not applying for SSI-related medical; and~~

~~(ii) Ineligible spouse of an SSI recipient.~~

~~(9) For a person in a separate MAU, based on the criteria described in subsection (8) of this section, the income and resource allocations described in subsection (6) of this section are not used. The SSI-related individual's eligibility is determined using the allocations or deeming rules in chapter 388-475 WAC.~~

~~(10) Countable income for medical programs:~~

~~(a) For SSI individuals is described in chapter 388-475 WAC; or~~

~~(b) For family medical, pregnancy medical, and children's medical is described in WAC 388-450-0210.)) (1) A person's financial eligibility for programs that use modified adjusted gross income (MAGI) methodology, as described in WAC 182-509-0300, is based on multiple factors including relationship to other household members, age, tax status and~~

pregnancy. The rules in this section describe which household members' income is counted in determining a person's eligibility. These household members comprise the person's "medical assistance unit" (MAU). Members of a single household may have different MAUs.

(2) The determination of countable income for MAGI-based programs is described in chapter 182-509 WAC.

(3) A person's MAGI-based countable income equals the total countable income of the members of the person's MAU (see WAC 182-509-0001). This income is compared to the income standard for the MAU size when determining eligibility for programs based on a federal poverty limit standard.

(4) The number of persons in the MAU is increased by one for each verified unborn child for each pregnant woman already included in the MAU under this section.

(5) For any given tax year in which an initial eligibility determination, renewal of eligibility, post-eligibility review or change of circumstance is made, MAUs are determined as follows:

(a) The MAU for a person who expects to file a federal tax return and does not expect to be claimed as a tax dependent by another tax filer includes the following:

(i) The person (tax filer) and all persons the tax filer expects to claim as a tax dependent; and

(ii) The following additional persons, but only if they live in the same residence:

(A) The person's spouse;

(B) The person's natural, adopted and step-children less than nineteen years of age;

(C) If the person is less than nineteen years of age, the person's natural, adopted and step-parents; and

(D) If the person is less than nineteen years of age, the natural, adoptive and step-siblings who are less than nineteen years of age.

(b) The MAU for a person who expects to be claimed as a tax dependent by a tax filer includes:

(i) The person (tax dependent), the tax filer, and any other persons in the tax filer's MAU (as determined according to (a) of this subsection), except if:

(A) The person is not the spouse or biological, adopted, or natural child of the tax filer;

(B) The person is under age nineteen and living in the same residence as both parents, but is expected to be claimed as a tax dependent by only one parent, either because the parents are unmarried or do not expect to file taxes jointly; or

(C) The person is under age nineteen and expects to be claimed by a noncustodial parent.

(ii) If (b)(i)(A), (B) or (C) of this section applies, the person's MAU is determined according to the nonfiler rules described in (c) of this subsection.

(c) The MAU for a person who does not expect to file a federal tax return and who either does not expect to be claimed as a tax dependent or meets one of the tax dependent exceptions in (b) of this subsection includes the following persons, but only if they live in the same residence:

(i) The person (self);

(ii) The person's spouse;

(iii) The person's natural, adopted and step-children less than nineteen years of age;



(iv) If the person is less than nineteen years of age, the person's natural, adopted and step-parents; and

(v) If the person is less than nineteen years of age, the natural, adoptive and step-siblings who are less than nineteen years of age.

#### NEW SECTION

**WAC 182-506-0015 Medical assistance units for non-MAGI-based Washington apple health programs.** This section explains how medical assistance units (MAUs) are constructed for programs not based on modified adjusted gross income (MAGI) methodologies. (MAGI-based programs are described in WAC 182-503-0510.)

(1) An MAU is a person or group of people who must be included together when determining eligibility. MAUs are established based on each person's relationship to other family members and the person's financial responsibility for the other family members.

(2) Financial responsibility applies only to spouses and to parents, as follows:

(a) Married persons, living together are financially responsible for each other;

(b) Natural, adoptive, or step-parents are financially responsible for their unmarried, minor children living in the same household;

(c) Minor children are not financially responsible for their parents or for their siblings;

(d) Married persons' financial responsibility for each other when not living together because one or both are residing in a medical institution is described in chapter 182-513 WAC.

(3) The number of persons in the MAU is increased by one for each verified unborn child for each pregnant woman already included in the MAU under this section.

(4) When determining eligibility for an SSI-related medical program, the agency determines household size according to the rules described in WAC 182-512-0820 and 182-512-0900 through 182-512-0960. A one-person MAU is required for:

(a) SSI recipients;

(b) Institutionalized persons;

(c) The purpose of applying medical income standards for an:

(i) SSI-related applicant whose spouse is not relatable to SSI or is not applying for SSI-related medical; and

(ii) Ineligible spouse of an SSI recipient.

**AMENDATORY SECTION** (Amending WSR 11-23-091, filed 11/17/11, effective 11/21/11)

**WAC 182-509-0001 Countable income for ((medical)) Washington apple health programs.** (1) For purposes of ((medical)) Washington apple health (WAH) program eligibility, a ((client's)) person's countable income is income which remains when:

(a) The income cannot be specifically excluded; and

(b) All appropriate deductions and disregards allowed by a specific program((s)) have been applied.

(2) A ((client's)) person's countable income ((cannot)) may not exceed the income standard for the specific ((medi-

cal)) WAH program((s described in WAC 388-478-0065, 388-478-0070, 388-478-0075, 388-478-0080, or 388-513-1305, 388-513-1315, or 388-513-1395)), unless the program allows for those limits to be exceeded. Specific program standards are described below:

(a) For modified adjusted gross income (MAGI)-based programs described in WAC 182-503—0510, see WAC 182-505-0100 for the applicable program standard based on a percentage of the federal poverty level (FPL);

(b) For WAH SSI-related CN coverage, see WAC 182-512-0010;

(c) For WAH MN coverage, see WAC 182-519-0050;

(d) For WAH for workers with disabilities, see WAC 182-511-0025;

(e) For WAH medicare savings programs, see WAC 182-517-0100;

(f) For WAH noninstitutional medical in an alternative living facility, see WAC 182-513-1305; and

(g) For WAH long-term care programs, see WAC 182-513-1315 and 182-513-1395.

(3) ((Unless modified by subsection (4) or (6) of this section, the TANF/SFA income rules, as described in this chapter, are used to determine a client's countable income for the following programs:

(a) Family medical program as described in WAC 388-505-0220;

(b) Medical extensions as described in chapter 388-523 WAC;

(c) Pregnant women's program as described in WAC 388-462-0015;

(d) Children's health care programs as described in WAC 388-505-0210; and

(e) Psychiatric indigent inpatient (PII) program as described in WAC 388-865-0217.

(4) Exceptions to the TANF/SFA cash assistance methodology apply as follows:

(a) The financial responsibility of relatives when a client is applying for medical for families, children, pregnant women or for the psychiatric indigent inpatient program is specified in WAC 388-408-0055;

(b) Actual work-related child and dependent care expenses, which are the client's responsibility, are income deductions (the limits on this deduction in WAC 388-450-0170 (3) and (4) do not apply);

(c) Court or administratively ordered current or back support paid to meet the needs of legal dependents, are income deductions;

(d) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signed the affidavit of support I 864 or I 864A. See subsection (5) of this section;

(e) TANF/SFA gross earned income limits as described in WAC 388-450-0165 do not apply;

(f) The fifty percent earned income deduction is not used to calculate countable income for CN scope of care programs with income levels based upon the federal poverty level (FPL). These programs are listed in subsections (3)(c) and (d). The only work-related income deductions for these programs are:

(i) Ninety dollars; and

~~(ii) Actual work-related child and dependent care expenses, as described in (b) of this subsection; and~~

~~(iii) Child support as described in (c) of this subsection.~~

~~(g) When determining medically needy (MN) or MN scope of care coverage for children or pregnant women for the programs described in subsections (3)(c) and (d), the exception described in subsection (4)(f) is not used as the MN income standards are not based on the FPL;~~

~~(h) For nonrecurring lump sum payments, see chapter 388-455 WAC and WAC 388-475-0300(4);~~

~~(i) Diversion cash assistance (DCA), is not countable income;~~

~~(j) Effective April 1, 2002, the department will disregard an increase in earned income when:~~

~~(i) A family is receiving benefits under the family medical program; and~~

~~(ii) The increase occurs during the second or third month of eligibility. The disregard stops the last day of the third month of eligibility for a family medical program.~~

~~(5) When an alien's sponsor has signed the affidavit of support I-864 or I-864A, the sponsor's income and resources are counted as described in WAC 388-450-0155, 388-450-0156, 388-450-0160, and 388-470-0060.~~

~~(6) Except when this state has adopted more liberal rules, SSI income rules are used to determine a client's countable income for the following programs:~~

~~(a) SSI-related CN or MN; and~~

~~(b) Medicare savings programs. Refer to chapter 388-475 WAC.) Anticipated nonrecurring lump sum payments received by an applicant or recipient of a WAH SSI-related medical program are counted as income in the month of receipt, with the exception of retroactive supplemental security income (SSI)/Social Security disability lump sum payments. See WAC 182-512-0300(4) and 182-512-0700 for more information.~~

~~(4) For the MAGI-based programs listed below, the agency or its designee determines eligibility based on the countable MAGI income of the members of the person's medical assistance unit as determined per WAC 182-506-0010:~~

~~(a) WAH for parents and caretaker relatives program as described in WAC 182-505-0240;~~

~~(b) WAH pregnancy program as described in WAC 182-505-0115;~~

~~(c) WAH for kids programs as described in WAC 182-505-0210 with the following exceptions:~~

~~(i) Newborn children born to a woman who is eligible for WAH on the date of the newborn's birth, including a retroactive eligibility determination;~~

~~(ii) Children who are receiving SSI;~~

~~(iii) Children who are in foster care or receiving subsidized adoption services.~~

~~(d) WAH MAGI-based adult medical as described in WAC 182-505-0250; and~~

~~(e) WAH MAGI-based alien emergency medical as described in WAC 182-507-0110.~~

~~(5) For the following SSI-related WAH programs, unless the state has adopted more liberal rules, income rules for the SSI program are used to determine a person's countable income:~~

(a) WAH noninstitutional SSI-related CN or medically needy (MN) coverage described in chapters 182-511 and 182-512 WAC;

(b) WAH institutional SSI-related CN or MN long-term care or hospice coverage described in chapters 182-513 and 182-515 WAC;

(c) WAH alien emergency medical programs based on age sixty-five or older or disability described in chapter 182-507 WAC; and

(d) WAH medicare savings programs described in chapter 182-517 WAC.

(6) Countable income for the WAH refugee medical (RMA) program and WAH MN program for pregnant women and children is determined as follows:

(a) The agency or its designee allows the following deductions from a person's gross earnings:

(i) Fifty percent of gross earned income;

(ii) Actual work-related child and dependent care expenses, which are the person's responsibility; and

(iii) Court or administratively ordered current or back support paid to meet the needs of legal dependents.

(b) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signs the affidavit of support I-864 or I-864A.

(c) Nonrecurring lump sum payments are counted as income in the month of receipt and as a resource if the person retains the payment after the month of receipt (resource limits do not apply to MN coverage for pregnant women and children). For RMA, nonrecurring lump sum payments are counted as income if received in the month of application and not considered if received thereafter per WAC 182-507-0130.

(7) Countable income rules for other WAH programs that are not MAGI-based or SSI-related are described in the specific program rules listed in WAC 182-503-0510 (3)(c).

(8) Some WAH programs are not based on a person's or household's countable income but are based on a specific status or entitlement in federal rule. The rules for these deemed eligible WAH programs are described in WAC 182-503-0510(4).

#### NEW SECTION

**WAC 182-509-0220 Washington apple health—How resources are considered.** (1) A resource is any cash, other personal property, or real property that a person:

(a) Owns;

(b) Has the right, authority, or power to convert to cash (if not already cash); and

(c) Has the legal right to use for his or her support and maintenance.

(2) There is no resource limit for an applicant or recipient of the following Washington apple health (WAH) programs:

(a) WAH for workers with disabilities (HWD) program, as described in chapter 182-511 WAC;

(b) WAH foster care program (see WAC 182-505-0211);

(c) All programs that are based on modified adjusted gross income (MAGI) methodologies, as described in WAC 182-503-0510. This includes the following:

(i) WAH for parents and caretaker relatives (see WAC 182-505-0240);

(ii) WAH for pregnant women (see WAC 182-505-0115);

(iii) WAH for kids (see WAC 182-505-0210);

(iv) Premium-based WAH for kids (see WAC 182-505-0215);

(v) WAH long-term care for children and adults (see WAC 182-514-0230);

(vi) WAH for MAGI-based adult coverage (see WAC 182-505-0250); and

(vii) WAH MAGI-based adult alien emergency medical (see WAC 182-507-0110).

(3) For all other WAH programs, the resource limits can be found in the following chapters:

(a) WAH SSI-related medical (see WAC 182-512-0300);

(b) WAH long-term care (see chapters 182-513 and 182-515 WAC);

(c) SSI-related WAH alien medical program (see chapter 182-507 WAC);

(d) Medicare savings program (see WAC 182-517-0310); and

(e) WAH for refugees (see WAC 182-507-0130).

(4) The agency or its designee determines how trusts, annuities and life estates affect eligibility for WAH coverage for the programs listed in subsections (3)(a) through (e) of this section by following the rules described in chapter 182-516 WAC.

(5) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations when a resource determination is required by the specific WAH program. If no resource determination is required by the specific WAH program, eligibility is not affected.

#### NEW SECTION

**WAC 182-509-0300 Modified adjusted gross income (MAGI).** (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health (WAH) programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Title II Social Security income or Tier 1 Railroad Retirement income.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income; and

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income. Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency determines the medical assistance unit for each person according to WAC 182-506-0010.

#### NEW SECTION

**WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology.** Eligibility for Washington apple health (WAH) for the following persons is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300.

(1) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below thirty-five percent of the federal poverty level (FPL) as described in WAC 182-505-0240.

(2) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in subsection (1) of this section but is at or below one hundred thirty-three percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(3) Adults with no eligible dependent child with net countable income at or below one hundred thirty-three percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(4) Pregnant women or women within a two-month postpartum period whose net countable income, based on a household size that includes any unborn children, is below one hundred eighty-five percent FPL at the time of application, as described in WAC 182-505-0115.

(5) Children age eighteen or younger in households with net countable income which is below two hundred percent FPL as described in WAC 182-505-0210 (3)(a).

(6) Children age eighteen or younger in households with net countable income which is between two hundred percent and three hundred percent FPL as described in WAC 182-

505-0215. Children who are eligible under this section are subject to premiums as described in WAC 182-505-0225.

(7) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

#### NEW SECTION

**WAC 182-509-0310 MAGI income—Timing of income.** (1) The agency uses a point-in-time estimate to determine a person's countable MAGI income.

(2) Point-in-time means that the income is received, or is likely to be received, in the month in which the person submits an application or renewal for Washington apple health (WAH), or the month in which the agency completes a re-determination of coverage, with the following provisions:

(a) When a person is paid less frequently than on a monthly basis, (for example, they are self-employed), the agency uses an average to calculate the monthly amount. The average is calculated by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the time frame; and

(iii) Using the result as a monthly average.

(b) When a person is paid more frequently than on a monthly basis, the agency uses the following budgeting method to calculate a monthly amount:

(i) If the person is paid weekly, the agency multiplies weekly expected income by 4.3;

(ii) If the person is paid every other week, the agency multiplies expected income by 2.15.

(c) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income over a representative period of time.

(3) If the person normally gets the income:

(a) On a specific day, the agency counts it as available on that date.

(b) Monthly or twice monthly and pay dates change due to a reason beyond the person's control, such as a weekend or holiday, it is counted in the month it would normally be received.

(c) Weekly or every other week and pay dates change due to a reason beyond the person's control, it is counted in the month it would normally be received.

(4) The agency relies on annual income data from the Internal Revenue Service and quarterly cross matches with state income sources to determine whether a household's self-attested income statement is a reasonable estimate of ongoing monthly income. When income is not reasonably compatible, the agency may conduct a post-eligibility review of the household's income and circumstances.

(5) If the person reports a change in income as required under WAC 182-504-0105 and the change is expected to last for two months or longer, the agency updates the estimate of income based on this change, unless the person receives categorically needy WAH coverage as a pregnant woman or child.

#### NEW SECTION

**WAC 182-509-0315 MAGI income—Ownership of income.** (1) Income is considered available to a person if:

(a) An individual in the person's medical assistance unit receives or can reasonably predict that he or she will receive the income.

(b) The income must be counted based on rules under chapter 182-509 WAC.

(c) The person has control over the income, which means the income is available to them. If the person has a representative payee, protective payee, or other individual who manages the income on the person's behalf, it is considered as if the person has control over this income.

(d) The person can use the income to meet current needs.

(2) Income that is included in the person's taxable gross income which is required to be reported to the Internal Revenue Service (IRS) is considered as available even if it is paid to someone else or withheld to pay a garnishment, lien or other obligation. (For example, a person manages a block of apartments and lives in one of the apartments. The employer withholds a portion of the person's monthly wages as rent due for the apartment in which he resides. The income that is counted is the gross amount prior to the deduction for rent.)

(3) The agency conducts post-eligibility reviews of health care applications. Upon request by the agency, a person must provide proof about a type of income, including submitting clarification on:

(a) Who owns the income;

(b) Who has legal control of the income;

(c) The amount of the income; or

(d) If the income is available.

#### NEW SECTION

**WAC 182-509-0320 MAGI income—Noncountable income.** (1) Some types of income are not counted when determining eligibility for modified adjusted gross income

MAGI-based Washington apple health (WAH). Under the MAGI income methodology described in WAC 182-509-0300, income is not counted if the Internal Revenue Service (IRS) permits it to be excluded or deducted for purposes of determining the tax liability of a person. (See 26 U.S.C. Sections 62(a) and 101-140.)

(2) Examples of income that are not counted include, but are not limited to:

(a) Bona fide loans, except certain student loans as specified under WAC 182-509-0335;

(b) Federal income tax refunds and earned income tax credit (EITC) payments for up to twelve months from the date received;

(c) Child support payments received by any person included in household size under WAC 182-506-0010;

(d) Time loss benefits or other compensation received for sickness or injury, such as benefits from the department of labor and industries (L&I) or a private insurance company;

(e) Title IV-E and state foster care maintenance payments;

(f) Veteran's benefits including, but not limited to, disability compensation and pension payments for disabilities paid to the veteran or family members; education, training

and subsistence; benefits under a dependent-care assistance program for veterans, housebound allowance and aid and attendance benefits;

(g) Educational assistance that is not counted under WAC 182-509-0335;

(h) Native American benefits and payments that are not counted under WAC 182-509-0340;

(i) Income from employment and training programs that is not counted under WAC 182-509-0345;

(j) Needs-based assistance from other agencies or organizations that is not counted under WAC 182-509-0350;

(k) Money withheld from a benefit to repay an overpayment from the same income source;

(l) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as Voluntary Agency (VOLAG) payments;

(m) Any portion of income used to repay the cost of obtaining that income source;

(n) Insurance proceeds or other income received as a result of being a Holocaust survivor;

(o) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(p) Federal twenty-five dollar supplement weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(q) Income from a sponsor given to a sponsored immigrant;

(r) Energy assistance payments;

(s) Fringe benefits provided on a pretax basis by an employer, such as transportation benefits or moving expenses;

(t) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;

(u) Distribution of pension payments paid by the employee (such as premiums or contributions) that were previously subject to tax;

(v) Gifts or inheritances to the person that are not counted under WAC 182-509-0355;

(w) Death benefits from life insurance and certain benefits paid for deaths that occur in the line of duty; and

(x) Other payments that are excluded from income under state or federal law.

(3) Income received from the following cash programs is not countable income for MAGI-based WAH programs:

(a) Diversion cash assistance (DCA);

(b) Temporary assistance for needy families (TANF);

(c) State family assistance (SFA);

(d) Pregnant women's assistance (PWA);

(e) Refugee cash assistance (RCA);

(f) Aged, blind, disabled cash assistance (ABD); and

(g) Supplemental security income (SSI).

#### NEW SECTION

**WAC 182-509-0325 MAGI income—Unearned income.** (1) Unearned income is income received from a source other than employment or self-employment. Examples of unearned income include, but are not limited to:

(a) Tier 1 Railroad Retirement;

(b) Unemployment compensation, except as described in WAC 182-509-0320;

(c) Title II Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);

(d) Rental income;

(e) Pensions, IRAs, military retirement and annuity payments, except as described in WAC 182-509-0320;

(f) Dividend payments from stocks or shares held in companies; and

(g) Per capita distributions from gaming made by a tribe (see WAC 182-509-0340).

(2) When the unearned income must be counted, the agency counts the gross amount before any taxes or premiums are taken out.

(3) See WAC 182-509-0320 for examples of unearned income that are not counted.

#### NEW SECTION

##### **WAC 182-509-0330 MAGI income—Earned income.**

(1) Earned income money is income received from working. This includes, but is not limited to:

(a) Wages;

(b) Salaries;

(c) Tips;

(d) Commissions;

(e) Profits from self-employment activities as described in WAC 182-509-0365 (<http://www.dshs.wa.gov/manuals/wac/388-450-0080.shtml>); and

(f) One-time payments for work done over a period of time, if the income is received in the month of application.

(2) When earned income must be counted, the agency computes the countable amount based on deductions from income allowed by the Internal Revenue Service when determining a person's tax liability.

(3) See WAC 182-509-0370 for information on how self-employment income is counted.

#### NEW SECTION

**WAC 182-509-0335 MAGI income—Educational benefits.** The agency or its designee does not count educational assistance as income. Examples include, but are not limited to:

(1) Educational assistance in the form of grants or loans issued under Title IV of the Higher Education Amendments (Title IV - HEA) or through a program administered by the Department of Education (DOE), such as:

(a) Pell grants (Title IV);

(b) Stafford loans (Title IV);

(c) Perkins loan program (Title IV);

(d) State need grant program (Title IV);

(e) Christa McAuliffe fellowship program (DOE);

(f) Jacob K. Javits fellowship program (DOE); and

(g) Library career training program (DOE).

(2) Payments received for education, training, or subsistence under any law administered by the department of Veteran's Affairs (VA).

(3) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(4) Educational assistance in the form of grants or loans under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392.

(5) Work study income including:

(a) Federal or state work study income; and

(b) WorkFirst work study income.

(6) Payments to service academy cadets at a military academy.

(7) Payments for the purposes of tuition made on behalf of the individual to an educational organization for the education or training of such individual.

#### NEW SECTION

**WAC 182-509-0340 MAGI income—Native American benefits and payments.** (1) The agency counts per capita distributions made to a tribal member from gaming monies.

(2) Examples of income the agency does not count include, but are not limited to:

(a) Up to two thousand dollars per person per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per person per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(3) The agency excludes other Native American payments and benefits that are excluded by federal law. Examples include, but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540;

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503; and

(d) The receipt of money by a member of a federally recognized tribe from exercising Native American treaty rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an

exempt resource during the month of receipt and is not counted as income.

For more information see 20 C.F.R. 416 Appendix to Subpart K at [http://www.socialsecurity.gov/OP\\_Home/cfr20/416/416-app-k.htm](http://www.socialsecurity.gov/OP_Home/cfr20/416/416-app-k.htm).

#### NEW SECTION

**WAC 182-509-0345 MAGI income—Income from employment and training programs.** (1) The agency excludes income received from the following programs:

(a) Payments issued under the Workforce Investment Act (WIA);

(b) Payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program;

(c) Payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps VISTA, University Year for Action, and Urban Crime Prevention Program; and

(d) All payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(i) Retired senior volunteer program (RSVP);

(ii) Foster grandparents program; and

(iii) Senior companion program.

(2) The agency counts training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments;

(b) The allowance is not a reimbursement; and

(c) The person is required to file a U.S. tax return and the IRS considers the income to be taxable.

#### NEW SECTION

**WAC 182-509-0350 MAGI income—Needs-based assistance from other agencies or organizations.** (1) The agency does not count needs-based assistance given to a person by other agencies or organizations if the assistance given is not treated as taxable income by the IRS. Examples of needs-based assistance are:

(a) Clothing;

(b) Food;

(c) Household supplies;

(d) Medical supplies (nonprescription);

(e) Personal care items;

(f) Shelter;

(g) Transportation; and

(h) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(2) "Needs-based" means eligibility for the program is based on having limited income and/or resources. This definition excludes such incomes as retirement benefits or unemployment compensation which are not needs-based.

#### NEW SECTION

**WAC 182-509-0355 MAGI income—Gifts and inheritances.** (1) A gift is an item furnished to a person without work or cost on his or her part. An inheritance is an item fur-

nished to a person by will or testament or by the laws of intestacy.

(2) The agency does not count as income to a person any gifts or inheritances, whether cash or noncash, received by the person, except that the agency does count as income to a person:

(a) Any gift or inheritance that is income from property; and

(b) Any income from any gift or inheritance.

(3) The agency does not count as income to a person any amounts paid on behalf of an individual to any person who provides medical care (as defined in Internal Revenue Code Section 213(d)) to the individual.

#### NEW SECTION

**WAC 182-509-0360 MAGI income—How a child's income is counted.** (1) Income received by a child claimed as a tax dependent by someone else is not counted when determining the eligibility of the tax filers who claim the tax dependent.

(2) Income received by a child in a nonfiling medical assistance unit (as described in WAC 182-506-0010) is not counted when determining the eligibility of the child or the other household members in the nonfiling household.

(3) Income received by a child age eighteen or younger who is required to file his or her own tax return but who is also claimed as a tax dependent by another person is counted when determining eligibility for WAH for the child, but not the person that claims them.

(4) Income of a sibling is not counted when determining the eligibility of any other sibling in the household.

#### NEW SECTION

**WAC 182-509-0365 MAGI income—Self-employment income.** (1) Self-employment income is income earned by a person from running a business, performing a service, selling items that are made, or reselling items with the intent to make a profit. This income can be earned if the person is carrying on a trade or business as a sole proprietor or an independent contractor; a member of a partnership that carries on a trade or business; or otherwise in business for themselves (including a part-time business).

(2) A person is considered to be self-employed if they earn income without having an employer/employee relationship with the individual who pays the income. Factors to consider are:

(a) The person has primary control or has the right to control what they do and how they do their job;

(b) The business aspects of the person's job are controlled by the person and not the payer (this includes things like how the person is paid, whether expenses are reimbursed, or who provides tools/supplies);

(c) The person has a written contract stating that he or she is an independent contractor; or

(d) The person reports his or her income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) A person is considered to have an employer/employee relationship when:

(a) The individual the person provides services for has primary control of how the work is done; or

(b) The person receives an IRS Form W-2 to report the income that is earned.

(4) Self-employment does not have to be a licensed business for a person's business or activity to qualify as self-employment. Some examples of self-employment are:

(a) Child care that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;

(e) Running lodging for roomers or boarders. Roomer income includes money paid to a person for shelter costs by someone not included in the person's household who resides in the same home when:

(i) The person owns or is buying his or her residence; or

(ii) The person rents all or a part of the residence and the total rent charged to all others in the home is more than the total rent obligation of the person.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling home-made items or items that are supplied to the individual;

(j) Selling or donating biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(l) Running a business or trade either as a sole proprietorship or in a partnership.

(5) A person must keep records of his or her self-employment income and deductions and provide this information to the agency upon request.

(6) The agency does not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). This is considered conversion of a resource. See WAC 182-509-0340.

(7) A person who is an employee of a company or other individual who does the activities listed in subsection (4) of this section as a part of his or her job duties is not considered to be self-employed.

(8) Self-employment income is counted as earned income as described in WAC 182-509-0330.

#### NEW SECTION

**WAC 182-509-0370 MAGI income—How self-employment income is counted.** (1) If the person has worked long enough at the business to file a federal tax return for the previous year and it represents his or her current income, the agency determines self-employment income by using the income and deductions claimed on the previous year's tax return.

(2) If the person has not worked long enough at the business to file a federal tax return in the previous year, the

agency permits a determination of monthly self-employment income by:

(a) Adding together gross self-employment income and any profit made from selling business property or equipment over the period of time the business has been in operation within the last year;

(b) Subtracting business expenses and income deduction expenses allowed by the Internal Revenue Service that the person would be entitled to if they were filing a full year return; and

(c) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year.

(3) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income over a representative period of time.

#### NEW SECTION

**WAC 182-509-0375 MAGI income—Lump sums.** (1) A lump sum payment is money that a person receives but does not expect to receive on a continuing basis, such as an insurance settlement.

(2) Any portion of a lump sum payment that is awarded for wrongful death, personal injury, damage, or loss of property is excluded from income.

(3) Any remaining portion of a lump sum payment is counted as income if it is received in the month of application, unless it qualifies as noncounted income under another rule, and with the exception of subsections (4) and (5) of this section.

(4) Receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt and is not budgeted as income.

(5) Federal, state and local tax refunds (including any interest and penalties) and earned income tax lump sums are not counted as income.

#### NEW SECTION

**WAC 182-520-0005 Washington apple health fraud referrals and overpayments.** (1) The agency or its designee may refer a case to the office of fraud and accountability for a fraud investigation when it has reliable information that the person purposely misrepresented their circumstances in order to qualify for Washington apple health (WAH).

(2) When a fraud investigation reveals substantial evidence to support a finding of fraud, the case is referred for prosecution. The prosecuting attorney's office decides which cases will be prosecuted.

(3) When a referral results in a conviction, an overpayment amount for the cost of the WAH coverage is established.

(4) The person is responsible to pay the agency for the amount of overpayment established as a result of a fraud conviction.

#### NEW SECTION

**WAC 182-520-0010 Washington apple health overpayments resulting from an administrative hearing.** (1) A person must pay the agency for overpayment of the cost of Washington apple health (WAH) coverage if both (a) and (b) of this subsection occur:

(a) The administrative law judge enters an order:

(i) That the person was not eligible for WAH coverage during a period of continuation of WAH coverage;

(ii) Dismissing the hearing under WAC 182-526-0285(3) and the agency's action that was appealed included a finding that the person was not eligible for WAH coverage; or

(iii) Dismissing the hearing under WAC 182-526-0285(4) due to a written agreement between all the parties that the person will pay for an overpayment of the cost of WAH coverage.

(b) The agency decides to pursue establishing the amount of overpayment (unless an amount was already agreed to in the written agreement described in (a)(iii) of this subsection) and collecting that overpayment.

(2) The overpayment amount is limited to payments for WAH coverage that were spent:

(a) During the sixty days following receipt of the hearing request; and

(b) For a person who was not eligible for WAH coverage.

### **WSR 13-16-098**

#### **PROPOSED RULES**

#### **HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed August 7, 2013, 10:32 a.m.]

#### Original Notice.

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

Title of Rule and Other Identifying Information: WAC 182-502-0022 Provider preventable conditions (PPCs)—Payment policy and chapter 182-527 WAC, Estate recovery and pre death liens.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on September 10, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 11, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on September 10, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 3, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).



Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is making the following housekeeping changes:

- For WAC 182-502-0022: Correcting the incorrect hyperlink to the agency form in the section.
- For chapter 182-527 WAC: In WAC 182-527-2810(2), replacing obsolete hyperlink; in WAC 182-527-2870, updating the office of financial recovery's mailing address; changing obsolete references to "the department" to "the agency" and "388" to "182" as appropriate.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jason R. P. Crabbe, P.O. Box 45004 [45504], Olympia, WA 98504-5504, (360) 725-1346.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule amendments are exempt from a small business economic impact statement per RCW 34.05.328 (5)(b).

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.

August 7, 2013  
Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-11-051, filed 5/14/13, effective 7/1/13)

**WAC 182-502-0022 Provider preventable conditions (PPCs)—Payment policy.** (1) This section establishes the agency's payment policy for services provided to medicaid clients on a fee-for-service basis or to a client enrolled in a managed care organization (defined in WAC 182-538-050) by health care professionals and inpatient hospitals that result in provider preventable conditions (PPCs).

(2) The rules in this section apply to:

(a) All health care professionals who bill the agency directly; and

(b) Inpatient hospitals.

(3) Definitions. The following definitions and those found in chapter 182-500 WAC apply to this section:

(a) **Agency** - See WAC 182-500-0010.

(b) **Health care-acquired conditions (HCAC)** - A condition occurring in any inpatient hospital setting (identified as a hospital acquired condition by medicare other than deep vein thrombosis/pulmonary embolism as related to a total knee replacement or hip replacement surgery in pediatric and obstetric patients.) Medicare's list of hospital acquired conditions is also available at: [http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalAcqCond/Hospital-Acquired\\_Conditions.html](http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalAcqCond/Hospital-Acquired_Conditions.html).

(c) **Other provider preventable conditions (OPPC)** - The list of serious reportable events in health care as identified by the department of health in WAC 246-302-030 and published by the National Quality Forum.

(d) **Present on admission (POA) indicator** - A status code the hospital uses on an inpatient claim that indicates if a condition was present at the time the order for inpatient admission occurs.

(e) **Provider preventable condition (PPC)** - An umbrella term for hospital and nonhospital acquired conditions identified by the agency for nonpayment to ensure the high quality of medicaid services. PPCs include two distinct categories: Health care-acquired conditions (HCACs) and other provider-preventable conditions (OPPCs).

(4) **Health care-acquired condition (HCAC)** - The agency will deny or recover payment to health care professionals and inpatient hospitals for care related only to the treatment of the consequences of a HCAC.

(a) HCAC conditions include:

(i) Foreign object retained after surgery;

(ii) Air embolism;

(iii) Blood incompatibility;

(iv) Stage III and IV pressure ulcers;

(v) Falls and trauma:

(A) Fractures;

(B) Dislocations;

(C) Intracranial injuries;

(D) Crushing injuries;

(E) Burns;

(F) Other injuries.

(vi) Manifestations of poor glycemic control:

(A) Diabetic ketoacidosis;

(B) Nonketotic hyperosmolar coma;

(C) Hypoglycemic coma;

(D) Secondary diabetes with ketoacidosis;

(E) Secondary diabetes with hyperosmolarity.

(vii) Catheter-associated urinary tract infection (UTI);

(viii) Vascular catheter-associated infection;

(ix) Surgical site infection, mediastinitis, following coronary artery bypass graft (CABG);

(x) Surgical site infection following bariatric surgery for obesity:

(A) Laparoscopic gastric bypass;

(B) Gastroenterostomy; or

(C) Laparoscopic gastric restrictive surgery.

(xi) Surgical site infection following certain orthopedic procedures:

(A) Spine;

(B) Neck;

(C) Shoulder;

(D) Elbow.

(xii) Surgical site infection following cardiac implantable electronic device (CIED).

(xiii) Deep vein thrombosis/pulmonary embolism (DVT/PE) following certain orthopedic procedures:

(A) Total knee replacement; or

(B) Hip replacement.

(xiv) Latrogenic pneumothorax with venous catheterization.

(b) Hospitals must include the present on admission (POA) indicator when submitting inpatient claims for payment. The POA indicator is to be used according to the official coding guidelines for coding and reporting and the CMS guidelines. The POA indicator may prompt a review, by the agency or the agency's designee, of inpatient hospital claims with an HCAC diagnosis code when appropriate according to the CMS guidelines. The agency will identify professional claims using the information provided on the hospital claims.

(c) HCACs are based on current medicare inpatient prospective payment system rules with the inclusion of POA indicators. Health care professionals and inpatient hospitals must report HCACs on claims submitted to the agency for consideration of payment.

(5) **Other provider preventable condition (OPPC)** - The agency will deny or recoup payment to health care professionals and inpatient hospitals for care related only to the treatment of consequences of an OPPC when the condition:

(a) Could have reasonably been prevented through the application of nationally recognized evidence based guidelines;

(b) Is within the control of the hospital;

(c) Occurred during an inpatient hospital admission;

(d) Has a negative consequence for the beneficiary;

(e) Is auditable; and

(f) Is included on the list of serious reportable events in health care as identified by the department of health in WAC 246-302-030 effective on the date the incident occurred. The list of serious reportable events in health care, as of the publishing of this rule, includes:

(i) Surgical or invasive procedure events:

(A) Surgical or other invasive procedure performed on the wrong site;

(B) Surgical or other invasive procedure performed on the wrong patient;

(C) Wrong surgical or other invasive procedure performed on a patient;

(D) Unintended retention of a foreign object in a patient after surgery or other invasive procedure;

(E) Intraoperative or immediately postoperative/postprocedure death in an ASA Class 1 patient.

(ii) Product or device events:

(A) Patient death or serious injury associated with the use of contaminated drugs, devices, or biologics provided by the hospital;

(B) Patient death or serious injury associated with the use or function of a device in patient care, in which the device is used or functions other than as intended;

(C) Patient death or serious injury associated with intravascular air embolism that occurs while being cared for in a hospital.

(iii) Patient protection events:

(A) Discharge or release of a patient/resident of any age, who is unable to make decisions, to other than an authorized person;

(B) Patient death or serious injury associated with patient elopement;

(C) Patient suicide, attempted suicide, or self-harm that results in serious injury, while being cared for in a hospital.

(iv) Care management events:

(A) Patient death or serious injury associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration);

(B) Patient death or serious injury associated with unsafe administration of blood products;

(C) Maternal death or serious injury associated with labor or delivery in a low-risk pregnancy while being cared for in a hospital;

(D) Death or serious injury of a neonate associated with labor or delivery in a low-risk pregnancy;

(E) Patient death or serious injury associated with a fall while being cared for in a hospital;

(F) Any stage 3, stage 4, or unstageable pressure ulcers acquired after admission/presentation to a hospital (not present on admission);

(G) Patient death or serious injury resulting from the irretrievable loss of an irreplaceable biological specimen;

(H) Patient death or serious injury resulting from failure to follow-up or communicate laboratory, pathology, or radiology test results.

(v) Environmental events:

(A) Patient death or serious injury associated with an electric shock in the course of a patient care process in a hospital;

(B) Any incident in which systems designated for oxygen or other gas to be delivered to a patient contains no gas, the wrong gas, or is contaminated by toxic substances;

(C) Patient death or serious injury associated with a burn incurred from any source in the course of a patient care process in a hospital;

(D) Patient death or serious injury associated with the use of physical restraints or bedrails while being cared for in a hospital.

(vi) Radiologic events: Death or serious injury of a patient associated with the introduction of a metallic object into the magnetic resonance imaging (MRI) area.

(vii) Potential criminal event:

(A) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider;

(B) Abduction of a patient of any age;

(C) Sexual abuse/assault on a patient within or on the grounds of a health care setting;

(D) Death or serious injury of a patient resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care setting.

(6) Reporting PPCs.

(a) The agency requires inpatient hospitals to report PPCs (as appropriate according to (d) and (e) of this subsection) to the agency by using designated present on admission (POA) indicator codes and appropriate HCPCs modifiers that are associated:

(i) With claims for medical assistance payment; or

(ii) With courses of treatment furnished to clients for which medical assistance payment would otherwise be available.

(b) Health care professionals and inpatient hospitals must report PPCs associated with medicaid clients to the agency even if the provider does not intend to bill the agency.

(c) Use of the appropriate POA indicator codes informs the agency of the following:

(i) A condition was present at the time of inpatient hospital admission or at the time the client was first seen by the health care professional or hospital; or

(ii) A condition occurred during admission or encounter with a health care professional either inpatient or outpatient.

(d) Hospitals must notify the agency of an OPPC associated with an established medicaid client within forty-five calendar days of the confirmed OPPC in accordance with RCW 70.56.020. If the client's medicaid eligibility status is not known or established at the time the OPPC is confirmed, the agency allows hospitals thirty days to notify the agency once the client's eligibility is established or known.

(i) Notification must be in writing, addressed to the agency's chief medical officer, and include the OPPC, date of service, client identifier, and the claim number if the facility submits a claim to the agency.

(ii) Hospitals must complete the appropriate portion of the HCA 12-200 form to notify the agency of the OPPC. Agency forms are available for download at: (~~http://maa.dshs.wa.gov/forms/~~) <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>.

(e) Health care professionals or designees responsible for or may have been associated with the occurrence of a PPC involving a medicaid client must notify the agency within forty-five calendar days of the confirmed PPC in accordance with chapter 70.56 RCW. Notifications must be in writing, addressed to the agency's chief medical officer, and include the PPC, date of service, and client identifier. Providers must complete the appropriate portion of the HCA 12-200 form to notify the agency of the PPC. Agency forms are available for download at (~~http://maa.dshs.wa.gov/forms/~~) <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>.

(f) Failure to report, code, bill or claim PPCs according to the requirements in this section will result in loss or denial of payments.

(7) Identifying PPCs. The agency may identify PPCs as follows:

(a) Through the department of health (DOH); or

(b) Through the agency's program integrity efforts, including:

(i) The agency's claims payment system;

(ii) Retrospective hospital utilization review process (see WAC 182-550-1700);

(iii) The agency's provider payment review process (see WAC 182-502-0230);

(iv) The agency's provider audit process (see chapter 182-502A WAC); and

(v) A provider or client complaint.

(8) Payment adjustment for PPCs. The agency or its designee conducts a review of the PPC prior to reducing or denying payment.

(a) The agency does not reduce, recoup, or deny payment to a provider for a PPC when the condition:

(i) Existed prior to the initiation of treatment for that client by that provider. Documentation must be kept in the client's clinical record to clearly support that the PPC existed prior to initiation of treatment; or

(ii) Is directly attributable to a comorbid condition(s).

(b) The agency reduces payment to a provider when the following applies:

(i) The identified PPC would otherwise result in an increase in payment; and

(ii) The portion of the professional services payment directly related to the PPC, or treatment of the PPC, can be reasonably isolated for nonpayment.

(c) The agency does not make additional payments for services on claims for covered health care services that are attributable to HCACs and/or are coded with POA indicator codes "N" or "U."

(d) Medicare crossover claims. The agency applies the following rules for these claims:

(i) If medicare denies payment for a claim at a higher rate for the increased costs of care under its PPC policies:

(A) The agency limits payment to the maximum allowed by medicare;

(B) The agency does not pay for care considered nonallowable by medicare; and

(C) The client cannot be held liable for payment.

(ii) If medicare denies payment for a claim under its national coverage determination agency from Section 1862 (a)(1)(A) of the Social Security Act (42 U.S.C. 1395) for an adverse health event:

(A) The agency does not pay the claim, any medicare deductible or any coinsurance related to the inpatient hospital and health care professional services; and

(B) The client cannot be held liable for payment.

(9) The agency will calculate its reduction, denial or recoupment of payment based on the facts of each OPPC or HCAC. Any overpayment applies only to the health care professional or hospital where the OPPC or HCAC occurred and does not apply to care provided by other health care professionals and inpatient hospitals, should the client subsequently be transferred or admitted to another hospital for needed care.

(10) Medicaid clients are not liable for payment of an item or service related to an OPPC or HCAC or the treatment of consequences of an OPPC or HCAC that would have been otherwise payable by the agency, and must not be billed for any item or service related to a PPC.

(11) Provider dispute process for PPCs.

(a) A health care professional or inpatient hospital may dispute the agency's reduction, denial or recoupment of payment related to a PPC as described in chapter 182-502A WAC.

(b) The disputing health care professional or inpatient hospital must provide the agency with the following information:

(i) The health care professional or inpatient hospital's assessment of the PPC; and

(ii) A complete copy of the client's medical record and all associated billing records, to include itemized statement or explanation of charges.

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2700 Purpose.** This chapter describes the requirements, limitations, and procedures that apply when the (~~department~~) medicaid agency or its designee recovers

the cost of medical care from the estate of a deceased client and when the ~~((department))~~ agency or its designee files liens prior to the client's death.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2730 Definitions.** The following definitions apply to this chapter:

**"Contract health service delivery area (CHSDA)"** means the geographic area within which contract health services will be made available by the Indian health service to members of an identified Indian community who reside in the area as identified in 42 C.F.R. Sec. 136.21(d) and 136.22.

**"Domestic partner"** ~~((means an adult who meets the requirements for a valid registered domestic partnership as established by RCW 26.60.030 and who has been issued a certificate of state registered domestic partnership by the Washington secretary of state))~~ See WAC 182-500-0025. When the terms "domestic partner" or "domestic partnership" are used in this chapter, they mean "state registered domestic partner" or "state registered domestic partnership."

**"Estate"** means all property and any other assets that pass upon the client's death under the client's will or by intestate succession pursuant to chapter 11.04 RCW or under chapter 11.62 RCW. The value of the estate will be reduced by any valid liability against the decedent's property at the time of death. An estate also includes:

(1) For a client who died after June 30, 1995 and before July 27, 1997, nonprobate assets as defined by RCW 11.02.-005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997 and before September 14, 2006, nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after September 14, 2006, nonprobate assets as defined by RCW 11.02.005 and any life estate interest held by the recipient immediately before death.

**"Heir"** means the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.

**"Joint tenancy"** means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship.

**"Life estate"** means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

**"Lis pendens"** means a notice filed in public records warning that title to certain real property is in litigation and the outcome of the litigation may affect the title.

**"Long-term care services"** means, for the purposes of this chapter only, the services administered directly or through contract by the department of social and health services for clients of the home and community services division of the department of social and health services (DSHS) and ~~((division of))~~ the developmental disabilities administration of DSHS including, but not limited to, nursing facility care and home and community services.

**"Medicaid"** ~~((means the state and federally funded program that provides medical services under Title XIX of the Federal Social Security Act))~~ see WAC 182-500-0070.

**"Medical assistance"** ~~((means medicaid services funded under Title XIX or state funded medical services))~~ see WAC 182-500-0070.

**"Medicare savings programs"** means the programs described in WAC ~~((388-517-0300))~~ 182-517-0300 that help a client pay some of the costs that medicare does not cover.

**"Property":** Examples include, but are not limited to, personal property, real property, title property, and trust property as described below:

(1) **"Personal property"** means any property that is not classified as real, title, or trust property in the definitions provided here;

(2) **"Real property"** means land and anything growing on, attached to, or erected thereon;

(3) **"Title property"** means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motorcycles, and vehicles.

(4) **"Trust property"** means any type of property interest titled in, or held by, a trustee for the benefit of another person or entity.

**"State-only funded long-term care"** means the long-term care services that are financed with state funds only.

**"Qualified long-term care insurance partnership"** means an agreement between the Centers for Medicare and Medicaid services (CMS), the Washington state insurance commission which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(C)(iii) of the act.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2733 Estate liability.** (1) The client's estate is not liable for services provided before July 26, 1987.

(2) The client's estate is not liable when the client died before July 1, 1994 and on the date of death there was:

(a) A surviving spouse; or

(b) A surviving child who was either:

(i) Under twenty-one years of age; or

(ii) Blind or disabled as defined under chapter ~~((388-511))~~ 182-512 WAC.

(3) The estate of a frail elder or vulnerable adult under RCW 74.34.005 is not liable for the cost of adult protective services (APS) financed with state funds only.

(4) On or before December 31, 2009, the client's estate is not liable for amounts paid for medicare premiums and other cost-sharing expenses incurred on behalf of a client who is eligible only for the medicare savings programs (MSP), and not otherwise medicaid eligible.

(5) On or after January 1, 2010, the client's estate is not liable for amounts paid for medical assistance cost-sharing for benefits for clients who received coverage under a MSP only or for clients who receive coverage under a medicare savings program and medicaid as described in 42 U.S.C. 1396a (a)(10)(E).

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2737 Deferring recovery.** ~~((+))~~ For a client who died after June 30, 1994, the ~~((department))~~ medicaid agency or its designee defers recovery from the estate until:

- ~~((a))~~ (1) The death of the surviving spouse, if any; and
- ~~((b))~~ (2) There is no surviving child who is:
  - ~~((i))~~ (a) Twenty years of age or younger; or
  - ~~((ii))~~ (b) Blind or disabled at the time of the client's death, as defined under WAC ~~((388-475-0050))~~ 182-512-0050.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2740 Age when recovery applies.** The client's age and the date when services were received determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services and subsection (2) covers liability for state-only funded long-term care services. An estate may be liable under both subsections.

- (1) For a client who on July 1, 1994 was:
  - (a) Age sixty-five or older, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age sixty-five or after July 26, 1987, whichever is later;
  - (b) Age fifty-five through sixty-four years of age, the client's estate is liable for medicaid services that were subject to recovery and provided on and after July 1, 1994; or
  - (c) Under age fifty-five, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age fifty-five.
- (2) Regardless of the client's age when the services were provided, the client's estate is liable for state-only funded long-term care services provided to:
  - (a) Clients of the home and community ~~((services' clients))~~ services division of the department of social and health services (DSHS) on and after July 1, 1995; and
  - (b) ~~((Division of))~~ Clients of the developmental ~~((disabilities' clients))~~ disabilities administration of DSHS on and after June 1, 2004.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2742 Services subject to recovery.** The ~~((department))~~ medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, in order to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state-only funded long-term care services, and subsection (3) of this section covers liability for all other state-funded services. An estate can be liable under any of these subsections.

- (1) The client's estate is liable for:
  - (a) All medicaid services provided from July 26, 1987, through June 30, 1994;
  - (b) The following medicaid services provided after June 30, 1994 and before July 1, 1995:
    - (i) Nursing facility services;
    - (ii) Home and community-based services; and
    - (iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services.
  - (c) The following medicaid services provided after June 30, 1995, and before June 1, 2004:
    - (i) Nursing facility services;
    - (ii) Home and community-based services;
    - (iii) Adult day health;
    - (iv) Medicaid personal care;
    - (v) Private duty nursing administered by the aging and ~~((disability services))~~ long-term support administration of the department of social and health services (DSHS); and
    - (vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection.
  - (d) The following services provided on and after June 1, 2004, through December 31, 2009:
    - (i) All medicaid services, including those services described in subsection (c) of this section;
    - (ii) Medicare savings programs services for individuals also receiving medicaid;
    - (iii) Medicare premiums only for individuals also receiving medicaid; and
    - (iv) Premium payments to managed care organizations.
  - (e) The following services provided on or after January 1, 2010:
    - (i) All medicaid services except those defined under ~~((subsection))~~ (d)(ii) and ~~((d))~~ (iii) of this ~~((section))~~ subsection;
    - (ii) All institutional medicaid services described in subsection (c) of this section;
    - (iii) Premium payments to managed care organizations; and
    - (iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid.

(2) The client's estate is liable for all state-only funded long-term care services and related hospital and prescription drug services provided to:

(a) Clients of the home and community (~~services' clients~~) services division of DSHS on and after July 1, 1995; and

(b) (~~Division~~) Clients of the developmental (~~disabilities' clients~~) disabilities administration of DSHS on and after June 1, 2004.

(3) The client's estate is liable for all state-funded services provided regardless of the age of the client at the time the services were provided.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2750 Delay of recovery for undue hardship.** The ~~((department))~~ medicaid agency or its designee delays recovery under this section when the ~~((department))~~ agency or its designee determines that recovery would cause an undue hardship for an heir. This delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery.

(1) Undue hardship exists when:

(a) The estate subject to adjustment or recovery is the sole income-producing asset of one or more heirs and income is limited;

(b) Recovery would deprive an heir of shelter and the heir lacks the financial means to obtain and maintain alternative shelter; or

(c) The client is survived by a domestic partner.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the decedent's cost of assistance would merely cause the heir inconvenience or restrict his or her lifestyle; or

(b) The undue hardship was created as a result of estate planning methods by which the heir or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.

(3) When a delay in recovery is not granted, the ~~((department))~~ agency or its designee provides notice to the person who requested the delay of recovery. The ~~((department's))~~ agency's or its designee's notice includes information on how to request an administrative hearing to contest the ~~((department's))~~ agency's or its designee's denial.

(4) When a delay of recovery is granted under subsection (1)(a) or ~~((1))~~(b) of this section, the ~~((department))~~ agency or its designee may revoke the delay of recovery if the heir(s):

(a) Fails to supply timely information and resource declaration when requested by the ~~((department))~~ agency or its designee;

(b) Sells, transfers, or encumbers title to the property;

(c) Fails to reside full-time on the premises;

(d) Fails to pay property taxes and utilities when due;

(e) Fails to identify the state of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the ~~((depart-~~

~~ment))~~ agency or its designee with documentation of the coverage status on an annual basis~~((:))~~;

(f) Have a change in circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or

(g) Dies.

(5) When a delay of recovery is granted due to undue hardship, the ~~((department))~~ agency or its designee has the option to:

(a) Apply a lien; and/or

(b) Accept a payment plan.

(6) A person may request an administrative hearing to contest the ~~((department's))~~ agency's or its designee's denial of delay of recovery due to undue hardship when that person suffered a loss because the delay was not granted.

(7) A request for an administrative hearing under this section must:

(a) Be in writing;

(b) State the basis for contesting the ~~((department's))~~ agency's or its designee's denial of the request for a delay of recovery due to an undue hardship;

(c) Include a copy of the ~~((department's))~~ agency's or its designee's denial;

(d) Be signed by the requester and include the requester's address and telephone number; and

(e) Be served, as described in WAC ~~((388-527-2870))~~ 182-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the ~~((department))~~ agency or its designee sent the decision denying the request for a delay of recovery.

(8) Upon receiving a request for an administrative hearing, the ~~((department))~~ agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(9) An adjudicative proceeding held under this section is governed by chapters 34.05 RCW and ~~((388-02))~~ 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2754 Assets not subject to recovery and other limits on recovery.** (1) Recovery does not apply to the first fifty thousand dollars of the estate value at the time of death and is limited to thirty-five percent of the remaining value of the estate for services the client:

(a) Received through July 24, 1993; and

(b) When the client died with:

(i) No surviving spouse;

(ii) No surviving child who is:

(A) Under twenty-one years of age;

(B) Blind; or

(C) Disabled.

(iii) A surviving child who is twenty-one years of age or older.

(2) For services received on and after July 25, 1993, all services recoverable under WAC ~~((388-527-2742))~~ 182-527-2742 will be recovered, even from the first fifty thousand dol-

lars of estate value that is exempt above, except as set forth in subsections (3) through (8) of this section.

(3) For a client who received services on and after July 25, 1993 through June 30, 1994, the following property, up to a combined fair market value of two thousand dollars, is not recovered from the estate of the client:

- (a) Family heirlooms;
- (b) Collectibles;
- (c) Antiques;
- (d) Papers;
- (e) Jewelry;
- (f) Photos; and

(g) Other personal effects of the deceased client and to which a surviving child is entitled.

(4) Certain properties belonging to American Indians/Alaska natives (AI/AN) are exempt from estate recovery if at the time of death:

(a) The deceased client was enrolled in a federally recognized tribe; and

(b) The estate or heir documents the deceased client's ownership interest in trust or nontrust real property and improvements located on a reservation, near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior, or located:

(i) Within the most recent boundaries of a prior federal reservation; or

(ii) Within the contract health service delivery area boundary for social services provided by the deceased client's tribe to its enrolled members.

(5) Protection of trust and nontrust property under subsection (4) is limited to circumstances when the real property and improvements pass from an Indian (as defined in 25 U.S.C. Chapter 17, Sec. 1452(b)) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and step-children, that their culture would nonetheless protect as family members, to a tribe or tribal organization and/or to one or more Indians.

(6) Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) are exempt from estate recovery by other laws and regulations.

(7) Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(8) Government reparation payments specifically excluded by federal law in determining eligibility are exempt from estate recovery as long as such funds have been kept segregated and not commingled with other countable resources and remain identifiable.

(9) Assets designated as protected by a qualified long-term care partnership (QLTC) policy issued on or after December 1, 2011, may be disregarded for estate recovery purposes if:

(a) The insured individual's estate is the recipient of the estate recovery exemption; or

(b) The insured individual holds title to property which is potentially subject to a predeath lien and that individual asserts the property is protected under the long term care (LTC) partnership policy.

(10) An individual must provide clear and convincing evidence that the asset in question was designated as protected to the office of financial recovery including:

(a) Proof of a valid QLTC partnership policy; and

(b) Verification from the LTC insurance company of the dollar amount paid out by the policy; and

(c) A current DSHS LTCP asset designation form when the LTC partnership policy paid out more than was previously designated.

(11) The insured individual's estate must provide evidence proving an asset is protected prior to the final recovery settlement.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2790 Filing liens.** (1) The ~~((department))~~ medicaid agency or its designee may file liens to recover the cost of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of a client consistent with 42 U.S.C. 1396p and chapters 43.20B RCW and ~~((388-527))~~ 182-527 WAC.

(2) Prior to the ~~((department))~~ agency or its designee filing a lien under this section, the ~~((department))~~ agency or its designee sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The probate estate's personal representative, if any;

(c) Any other person known to have title to the affected property and/or to the decedent's heir(s) as defined by WAC ~~((388-527-2730))~~ 182-527-2730; and

(d) The decedent's last known address or the address listed on the title, if any.

(3) The notice in subsection (2) of this section includes:

(a) The decedent's name, identification number, date of birth, and date of death;

(b) The amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client that the ~~((department))~~ agency or its designee seeks to recover;

(c) The ~~((department's))~~ agency's or its designee's intent to file a lien against the deceased client's property and other assets to recover the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client;

(d) The county in which the property and other assets are located; and

(e) The procedures to contest the ~~((department's))~~ agency's or its designee's decision to file a lien by applying for an administrative hearing.

(4) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the decedent alleged by the ~~((department's))~~ agency's or its designee's notice is correct;

(b) Whether the decedent had legal title to the property; and

(c) Whether a lien is allowed under the provisions of Title 42 U.S.C. Section 1396p (a) and (b).

(5) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC (~~(388-527-2870)~~) 182-527-2870, within twenty-eight calendar days of the date the ((department)) agency or its designee mailed the notice.

(6) Upon receiving a request for an administrative hearing, the ((department)) agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(7) Disputed assets must not be distributed while in litigation.

(8) An administrative hearing under this section is governed by chapters 34.05 RCW and (~~(388-02)~~) 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter (~~(388-02)~~) 182-526 WAC, the provision in this section governs.

(9) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the ((department)) agency or its designee only files a lien against the decedent's property and other assets only if upheld by the final agency decision.

(10) If no known title holder requests an administrative hearing, the ((department)) agency or its designee files a lien twenty-eight calendar days after the date the ((department)) agency or its designee mailed the notice described in subsection (2) of this section.

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2810 Life estates and joint tenancy.**

(1) The ((department)) medicaid agency or its designee may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death until the lien is satisfied. The ((department)) agency or its designee will not apply a lien against a decedent's life estate interest providing the decedent had not previously transferred an interest in the property while retaining a life estate.

(a) The value of the life estate subject to the lien is the fair market value of the decedent's interest in the property subject to the life estate immediately prior to death.

(b) The value of the joint tenancy interest subject to the lien is the value of the decedent's fractional interest he or she would have owned in the jointly held interest in the property had the decedent and the surviving joint tenants held title to the property as tenants in common immediately prior to death.

(2) The ((department's)) agency's or its designee's methodology for calculating the value of the life estate is determined using fair market value of the property. To determine the value of the life estate, the ((department)) agency or its

designee multiplies the current fair market value of the property by the life estate factor in the life estate table. (The Centers for Medicare and Medicaid Services based table is found in the ((department's)) department of social and health service's Eligibility A-Z Manual, Long Term Care, Appendix II and is available online at: (~~(http://www1.dshs.wa.gov/esa/eazmanual/)~~) <http://www.dshs.wa.gov/manuals/eaz/sections/longtermcare/LTCOappendix2.shtml>.)

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2820 Liens prior to death.** (1) Subject to the requirements of 42 U.S.C. Section 1396p and the conditions of this section, the ((department)) agency or its designee is authorized to file a lien against the property of a medical assistance client prior to his or her death, and to seek adjustment and recovery from the client's estate or sale of the property subject to the lien if:

(a) The client is permanently an inpatient in a nursing facility, intermediate care facility for individuals with mental retardation, or other medical institution as described in WAC (~~(388-500-0005)~~) 182-500-0050;

(b) The ((department)) agency or its designee determines, after notice and opportunity for a hearing, that the client cannot reasonably be expected to be discharged from the medical institution and return home; and

(c) None of the following are lawfully residing, in the client's home:

(i) The client's spouse or domestic partner;

(ii) The client's child who at the time of the client's death is twenty years of age or younger, or is blind or permanently and totally disabled as defined in Title 42 U.S.C. Section 1382c; or

(iii) A sibling of the client (who has an equity interest in such home and who was residing in the client's home for a period of at least one year immediately before the date of the client's admission to the medical institution).

(2) If the client is discharged from the medical facility and returns home, the ((department)) agency or its designee dissolves the lien.

(3) Prior to the ((department)) agency or its designee filing a lien under this section, the ((department)) agency or its designee sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The client's known address;

(c) Any other person known to have title to the affected property and the client's authorized representative, if any.

(4) The notice in subsection (3) of this section includes:

(a) The client's name, and the date the client began to receive services;

(b) The ((department's)) agency's or its designee's intent to file a lien against the client's property to recover the amount of medical assistance or state-only funded long-term care services, or both correctly paid on behalf of the client;

(c) The county in which the property and other assets are located; and



(d) The procedures to contest the ~~((department's))~~ agency's or its designee's decision to file a lien by applying for an administrative hearing.

(5) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, on behalf of the decedent alleged by the ~~((department's))~~ agency's or its designee's notice is correct; and

(b) Whether the decedent had legal title to the identified property.

(6) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC ~~((388-527-2870))~~ 182-527-2870, within twenty-eight calendar days of the date the ~~((department))~~ agency or its designee mailed the notice.

(7) Upon receiving a request for an administrative hearing, the ~~((department))~~ agency or its designee notifies persons known to have title to the property of the time and place of the administrative hearing.

(8) Disputed assets must not be distributed while in litigation.

(9) An administrative hearing under this subsection is governed by chapters 34.05 RCW and ~~((388-02))~~ 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision in this section governs.

(10) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the ~~((department))~~ agency or its designee only files a lien against the client's property and other assets only if upheld by the final agency decision.

(11) If no known title holder requests an administrative hearing, the ~~((department))~~ agency or its designee files a lien twenty-eight calendar days after the date the ~~((department))~~ agency or its designee mailed the notice described in subsection (3) of this section.

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2830 Request for notice of transfer or encumbrance.** (1) When a client receives medical assistance subject to recovery under this chapter and the client is the holder of record title to real property or the purchaser under a land sale contract, the ~~((department))~~ medicaid agency or its designee files a request for notice of transfer or encumbrance ~~((f))(DSHS form 18-664 Notice of Possible Debt(f))~~ with the county auditor for recording in the deed and mortgage records.

(2) The request for notice of transfer or encumbrance ~~((f))(DSHS 18-664(f))~~ complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

(a) Client's name and case identifier;

(b) Legal description of the real property, including parcel number; and

(c) Mailing address for the ~~((department))~~ agency or its designee to receive the notice of transfer or encumbrance.

(3) The request for notice of transfer or encumbrance ~~((f))(18-664(f))~~ described in subsection (1) of this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property.

(4) When filing a request for notice of transfer or encumbrance ~~((f))(DSHS 18-664(f))~~ with the county auditor, the ~~((department))~~ agency or its designee gives the opportunity to request an administrative hearing as follows:

(a) Any person known to have title to the property is served with a copy of the notice. The notice states:

(i) The ~~((department's))~~ agency's or its designee's intent to recover from the client's estate the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client;

(ii) The county in which the property is located; and

(iii) The right of the person known to have title in the property to contest the ~~((department's))~~ agency's or its designee's decision to file the notice by applying for an administrative hearing with the office of financial recovery (OFR).

(b) An administrative hearing only determines:

(i) Whether the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client alleged by the ~~((department's))~~ agency's or its designee's notice is correct; and

(ii) Whether the client has legal title to the identified property.

(5) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the ~~((department's))~~ agency's or its designee's notice;

(c) Be signed by the requester and state the requester's address and telephone number; and

(d) Be served on OFR as described in WAC ~~((388-527-2870))~~ 182-527-2870, within twenty-eight calendar days of the date the individual received the ~~((department's))~~ agency's or its designee's notice.

(6) Upon receiving a request for an administrative hearing, the ~~((department))~~ agency or its designee notifies the persons known to have title to the property of the time and place of the administrative hearing.

(7) An administrative hearing under this section is governed by chapters ~~((388-05))~~ 34.05 RCW and ~~((388-02))~~ 182-526 WAC, and this section. If a provision of this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision of this section governs.

(8) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance ~~((f))(DSHS 18-664(f))~~ when performing a title search on real property must disclose the presence of the request for notice or transfer or encumbrance of real property in any report preliminary to, or commitment to offer, a certificate of title insurance for the real property.

(9) If the ~~((department))~~ agency or its designee has filed a request for notice of transfer or encumbrance ~~((f))(DSHS 18-664(f))~~, any individual who transfers or encumbers real property must provide the ~~((department))~~ agency or its designee with a notice of transfer or encumbrance ~~((f))(DSHS 18-~~

663((f))) as described in WAC ((388-527-2850)) 182-527-2850.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2840 Termination of request for notice of transfer or encumbrance.** (1) The ((department)) medicaid agency or its designee files a termination of prior notice ((f))(DSHS 18-662((f))) of transfer or encumbrance, with the county auditor for recording when, in the judgment of the ((department)) agency or its designee, it is no longer necessary or appropriate for the ((department)) agency or its designee to monitor transfers or encumbrances related to the real property.

(2) The termination of prior notice ((f))(DSHS 18-662((f))) request for notice of transfer or encumbrance complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

- (a) Client's name and case identifier;
- (b) Legal description of the real property, including parcel number; and
- (c) Mailing address for the ((department)) agency or its designee to receive the notice of transfer or encumbrance.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2850 Notice of transfer or encumbrance.** (1) If the ((department)) medicaid agency or its designee has filed a request for notice of transfer or encumbrance ((f))(DSHS 18-664 Notice of Possible Debt((f))), any individual who transfers or encumbers real property must provide the ((department)) agency or its designee with a notice of transfer or encumbrance ((f))(DSHS 18-663((f))) or a substantially similar notice as required by chapter 43.20B RCW.

(2) The ((department's)) agency's or its designee's notice of transfer or encumbrance ((f))(DSHS 18-663((f))) is available online at ((http://www1.dshs.wa.gov/msa/forms/eforms.html)) <http://www.dshs.wa.gov/forms/eforms.shtml> or by writing to Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504-5805.

(3) The notice of transfer or encumbrance ((f))(DSHS 18-663((f))) must comply with the requirements for recording in RCW 36.18.010, and, at a minimum, contain the:

- (a) Client's name and case identifier as listed on the ((department's)) agency's or its designee's request for notice of transfer or encumbrance;
- (b) Recording date and recording reference as listed on the ((department's)) agency's or its designee's request for notice of transfer or encumbrance;
- (c) Legal description of the real property as listed on the ((department's)) agency's or its designee's request for notice of transfer or encumbrance; ((and))
- (d) Type of instrument; and
- (e) Recording date and recording reference.

(4) The notice of transfer or encumbrance ((f))(DSHS 18-663((f))) or a similar notice and copy of the transfer or encumbrance related to the real property must be sent to the ((department)) agency or its designee as specified in WAC ((388-527-2870)) 182-527-2870.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2860 Interest assessed on past due debt.** (1) The recovery debt becomes past due and accrues interest at a rate of one percent per month on recoverable estate assets beginning nine months after the earlier of:

(a) The filing of the ((department's)) medicaid agency's or its designee's creditor's claim in the probate of the deceased client's estate; or

(b) The recording of the ((department's)) agency's or its designee's lien against the property of the deceased client in the county where the property is located.

(2) The ((department)) agency or its designee may waive interest if:

(a) Insufficient cash, accounts, or stock exist to satisfy the ((department's)) agency's or its designee's claim and no sales of estate property has occurred despite its continuous listing or marketing for sale in a commercially reasonable manner for a reasonable fair market value; or

(b) Suit filed in the probate of the deceased client's estate resulted in the filing of a lis pendens or order prohibiting the personal representative from selling the estate property. However, this section does not apply to such suite contesting the ((department's)) agency's or its designee's assessment of interest or claim for reimbursement of medical assistance or state-only funded long-term care services debt.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2870 Serving notices on the office of financial recovery (OFR).** Serving legal notice on the office of financial recovery (OFR) requires the notice to be served either:

(1) In person at ((the Blake Office Park, 4450 10th Ave S.E., Lacey)) DCS - Office of Financial Recovery, 712 Pear St. S.E., Olympia, Washington 98504-0001; or

(2) By certified mail, return receipt requested, to Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501.

## WSR 13-16-099

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration))

((Community Services Division))

[Filed August 7, 2013, 10:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-081.

Title of Rule and Other Identifying Information: The department is proposing to amend the following rules to implement annual adjustments to standards for the Washington Basic Food program: WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on September 10, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 11, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 10, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 21, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?, increasing the standard utility allowance from \$394 to \$409.

Reasons Supporting Proposal: The amendments update Basic Food standards for federal fiscal year (FFY) 2014 to comply with requirements of the United States Department of Agriculture, Food and Nutrition Service (FNS 7 C.F.R. § 273.9 (d)(iii)(B)), memo dated July 1, 2013 SUA for FFY 2014 and SUA forecast for FFY 2014.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.9 (d)(iii)(B).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, Community Services Division, 712 Pear Street, Olympia, WA, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

July 31, 2013  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-24-027, filed 12/1/11, effective 1/1/12)

**WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?** (1) We use a standard utility allowance (SUA) of (~~three hundred ninety-four~~) four hundred nine

dollars instead of your actual utility costs when we determine your assistance unit's:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) We considered the average cost of the following utilities to determine the value of the SUA:

(a) Heating and cooling fuel such as electricity, oil, or gas;

(b) Electricity;

(c) Water and sewer;

(d) Well or septic tank installation/maintenance;

(e) Garbage/trash collection; and

(f) Telephone service.

(3) The department uses the SUA if you have utility costs separate from your rent or mortgage payment or if you receive a low income home energy assistance program (LIHEAP) benefit during the year.

### WSR 13-16-101

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed August 7, 2013, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-076.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, specifically WAC 388-106-0010 and 388-106-0130.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on September 24, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 25, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 24, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 9, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending and clarifying rules to revise the assessment process for allocating personal care hours as a result of the Washington state supreme court decision in *Samantha A. v. Department of Social and Health Services*.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

Rule is necessary because of state court decision, *Samantha A. v. DSHS*.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2495.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or non-profits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

July 31, 2013  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-17 issue of the Register.