

**WSR 16-18-004**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 25, 2016, 9:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-05-004.

Title of Rule and Other Identifying Information: Amends WAC 181-77-031, 181-77-041 and 181-77-081, to clarify renewal date, and the addition per RCW 28A.410.278 of evaluation training requirements. Clarifies the name of the career and technical education certificate for career guidance specialist.

Hearing Location(s): Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, on November 3, 2016, at 8:30.

Date of Intended Adoption: November 3, 2016.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by October 27, 2016.

Assistance for Persons with Disabilities: Contact David Brenna by October 27, 2016, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies and responds to previous statute on teacher [and] principal evaluation program training.

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

Statute Being Implemented: RCW 28A.410.278.

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

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. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

August 25, 2016

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 16-07-096, filed 3/18/16, effective 4/18/16)

**WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved college/university programs in a career and technical education endorsement area.** Candidates shall complete the following requirements in addition

to those set forth in WAC 181-79A-150, 181-79A-155, 181-82-322, and chapter 181-78A WAC.

(1) Initial.

(a) Candidates for the initial certificate shall hold a baccalaureate degree from a regionally accredited college or university which includes a minimum of forty-five quarter hours of study in the specific career and technical education subject area for which certification is sought.

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the specific endorsement areas of WAC 181-82-322.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher training program through a regionally accredited college or university which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of one year of paid occupational experience (two thousand hours) in the specific career and technical education field for which certification is sought. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience.

(e) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject area certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer((—)) (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal. Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(a) Six quarter hours or sixty clock hours of career and technical education educator training;

(b) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(c) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience;

(d) Provided, beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must

include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsements. ~~((Certificates with a renewal date of June 30, 2019))~~ Applications for certificate renewal dated September 1, 2018, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics;

(e) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2018, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.

AMENDATORY SECTION (Amending WSR 16-15-057, filed 7/18/16, effective 8/18/16)

**WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience.** Candidates for certification who have not completed approved programs set forth in WAC 181-82-322 shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought: Provided, That individuals seeking the initial certification for the sole purpose of instruction of American sign language who are deaf, hard of hearing per RCW 43.20A.720, or who's primary method of communication is American sign language, may have the requirements for interpreter experience waived by the certification office of the superintendent of public instruction.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(iv) Individuals seeking this certification solely for teaching American sign language must also hold or earn the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, the American sign language performance interview, or meet the standard required of interpreters for the deaf per RCW 28A.410.271.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program

under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

(i) General and specific safety;

(ii) Career and technical education teaching methods;

(iii) Occupational analysis;

(iv) Course organization and curriculum design;

(v) Philosophy of vocational education;

(vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

(i) School law;

(ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer((-) (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience((±

(±±)).

(b) Provided, beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsements. Applications for renewal dated September 1, 2018, and beyond must demon-

strate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics.

~~((b))~~ (c) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2018, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.

(d) Beginning January 2018, renewal of continuing certificates under this section specifically for teaching American sign language will require the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, or meet the standard required of interpreters of the deaf per RCW 28A.410.271.

**AMENDATORY SECTION** (Amending WSR 16-12-025, filed 5/23/16, effective 6/23/16)

**WAC 181-77-081 Requirements for certification of career guidance specialist.** Career guidance specialists must meet the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155:

(1) Probationary certificate.

(a) Beginning July 1, 2018, a candidate is eligible for the probationary career guidance specialist certification if meeting one of the following:

(i) Completion of three years of experience as a certificated career and technical education administrator, career and technical education instructor, or career and technical education counselor, at the initial or continuing certificate level; or

(ii) Hold a valid educational staff associate(—)-Counselor certificate as provided in WAC 181-79A-221; or

(iii) Provide documentation of three years (six thousand hours) of full-time paid occupational experience of which two years shall have been in the last six years, dealing with employment, personnel or with placement and evaluation of workers, or experience providing career guidance, employment or career counseling services.

(b) Such a certificate may be issued upon recommendation by the employing school district according to the following:

(i) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by a district career and technical education advisory committee.

(ii) The plan shall develop procedures and timelines for the candidate to meet the requirements for the initial certificate.

(c) The probationary certificate is valid for two years and is renewable one time for two additional years upon recom-

mendation of the employing district if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial certificate.

(2) Initial certificate.

(a) The initial career guidance specialist certificate is valid for four years and may be renewed two times.

(b) Candidates must meet the eligibility requirements for the probationary certificate outlined in this section.

(c) Candidates for the initial certificate shall demonstrate competence through a course of study from a state approved program provider or state approved continuing education provider in the general standards for career guidance specialist which include, but are not limited to, knowledge and skills in the following areas as approved by the professional educator standards board:

(i) Individual and group career guidance skills;

(ii) Individual and group career development assessment;

(iii) Information and resources in providing career guidance;

(iv) Career guidance program planning, implementation, and management;

(v) Diverse populations;

(vi) Student leadership development;

(vii) Ethical/legal issues;

(viii) Technology;

(ix) History and philosophy of career and technical education.

(d) In order to teach worksite learning and career choices courses, candidates must successfully complete requirements per WAC 181-77A-180.

(3) Initial certificate renewal.

(a) Candidates for renewal of the initial career guidance specialist certificate must complete at least six quarter hours of college credit or sixty clock hours since the initial certificate was issued or renewed. Provided, at least two quarter credits or fifteen clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section.

(b) The initial renewal certificate is valid for three years and may be renewed one time.

(4) Continuing certificate.

(a) Candidates for the continuing career guidance specialist certificate shall have in addition to the requirements for the initial certificate at least fifteen quarter hours of college credit or one hundred fifty clock hours completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years as a career guidance specialist with an authorized employer (i.e., school district(s) or skills center(s)).

(c) The continuing career guidance specialist certificate is valid for five years.

(5) Continuing certificate renewal. The continuing career guidance specialist certificate shall be renewed with the completion of fifteen quarter hours of college credit or the equivalent of one hundred fifty clock hours, prior to the lapse date of the first issuance of the continuing certificate and during each five-year period between subsequent lapse dates.

Provided, at least four quarter credits or thirty clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section.

(6) Certificates issued under previous standards.

(a) Any person with a valid one-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board shall be eligible for the probationary certificate and must meet the requirements for earning the initial certificate.

(b) Any person with a valid three-year or five-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the continuing (~~occupational information~~) career guidance specialist certificate by the expiration date of the original certificate held.

(c) Upon issuance of the probationary initial or continuing career guidance specialist certificate, individuals addressed in this subsection will be subject to certificate renewal requirements of this section.

**WSR 16-18-007**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 25, 2016, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-036.

Title of Rule and Other Identifying Information: Clarifies renewal dates for teacher certification.

Hearing Location(s): Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, on November 3, 2016, at 8:30.

Date of Intended Adoption: November 3, 2016.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by October 27, 2016.

Assistance for Persons with Disabilities: Contact David Brenna by October 27, 2016, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Renewal dates are changed to reflect when certificates must include additional requirements.

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

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

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. The proposed amendment does not have an impact on small business and therefore

does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

August 25, 2016  
David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 16-07-103, filed 3/18/16, effective 4/18/16)

**WAC 181-79A-251 Teacher residency and professional certification—Renewal and reinstatement.** (1) Residency certificates shall be renewed under one of the following options:

(a) Individuals who hold, or have held, residency certificates have the following options for renewal past the first three-year certificate:

(i) Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;

(ii) Individuals who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or they will complete assessment for National Board for Professional Teaching Standards. Individuals not employed as a teacher may permit their certificate to lapse until such time they register for the professional certificate assessment, or the National Board Certification;

(iii) Individuals whose three-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment or assessment for National Board for Professional Teaching Standards: Provided, That teachers holding certificates expiring in 2014, 2015, or 2016 who have completed the available sections for the National Board Teacher Certificate may receive an additional two-year renewal in 2016 or 2017 to complete the assessment.

(b) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, Provided: When the first two-year renewal on residency certificates expires, teachers have three renewal options:

(i) Individuals who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(ii) Individuals who were unemployed or employed less than full-time as a teacher during the first two-year renewal may permit their certificate to lapse. Upon contracting to return to a teacher role, individuals may apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a

uniform assessment portfolio for the professional certification assessment((-);

(iii) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will complete and submit their scores from the assessment for National Board for Professional Teaching Standards or register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

(c) Individuals who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than one year following the final residency expiration: Provided, That the teacher registers and passes the Washington uniform assessment portfolio as per this section, WAC 181-79A-206 or assessment for National Board for Professional Teaching Standards within two years of issuance of the transitional certificate.

(d) Individuals who hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.

(2) Teacher professional certificate.

(a) A valid professional teacher certificate issued prior to September 1, 2014, may be renewed for additional five-year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC or by completing four professional growth plans as defined in WAC 181-79A-030.

(b) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal.

(c) Renewal of the professional certificate.

(i) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(ii) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(iii) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207.

(iv) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, technology, engineering, and mathematics instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. ~~((Certificates with a renewal date of June 30, 2019))~~ Applications for certificate renewal dated September

1, 2018, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics. This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate.

(v) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(vi) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this section. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

(vii) For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(viii) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

(ix) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. ~~((Certificates with a renewal date of June 30, 2019))~~ Applications for certificate renewal dated September 1, 2018, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.

(d) An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.

(e) Individuals not in the role of a teacher in a public school or approved private school holding a professional teaching certificate may have their professional certificate renewed for a five-year period by the completion of:

(i) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-79A-207; or

(ii) One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or

(iii) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal.

### WSR 16-18-009

#### PROPOSED RULES

### PROFESSIONAL EDUCATOR

#### STANDARDS BOARD

[Filed August 25, 2016, 11:12 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-037.

Title of Rule and Other Identifying Information: Amends WAC 181-85-033, adding additional clock hours for service as a supervisor of teacher interns.

Hearing Location(s): Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, on November 3, 2016, at 8:30.

Date of Intended Adoption: November 3, 2016.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by October 27, 2016.

Assistance for Persons with Disabilities: Contact David Brenna by October 27, 2016, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Enhances the clock hour reward for service as a teacher intern supervisor from twenty hours to thirty hours.

Reasons Supporting Proposal: Improved compensation in the form of clock hours to provide new teacher support, improves program's ability to recruit supervisors.

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

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

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. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

August 25, 2016

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-17-039, filed 8/7/12, effective 9/7/12)

**WAC 181-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional Teaching Standards assessment—Supervisors—First peoples' language, culture and oral tribal traditions.** (1) Notwithstanding any provisions of this chapter to the contrary, for consultation and collaboration as a member of an approved professional growth team, as defined by WAC 181-78A-010 and 181-79A-030, members of a professional growth team, excluding the candidate, shall receive the equivalent of three continuing education credit hours. The team member may not receive more than the equivalent of six continuing education credit hours, as defined by this section, during a calendar year period.

(2) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(3)(a) Notwithstanding any provisions of this chapter to the contrary, individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students or the superintendent of public instruction, a person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ~~((ten))~~ thirty continuing education credit hours for service as a supervisor. The person may not receive more than the equivalent of ~~((twenty))~~ thirty continuing education credit hours during a ~~((calendar))~~ school year period.

(b) The term "supervisor" shall mean individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students, or the office of superintendent of public instruction for supervising the training of teacher interns, administrative interns, educational staff associate interns, and paraprofessionals.

(4) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of forty-five continuing education credit hours for completion of an assessment process as part of the National Board for Professional Teaching Standards certificate application. Upon achieving National Board certification, the individual shall receive the equivalent of an additional forty-five con-

tinuing education credit hours for a total of ninety continuing education credit hours per National Board certificate.

(5) Notwithstanding any provisions of this chapter to the contrary, teachers who achieve the professional certification through the external assessment per WAC 181-79A-206 will receive the equivalent of one hundred fifty continuing education credit hours.

(6) Notwithstanding any provision of this chapter to the contrary, individuals who receive in-service training or continuing education according to RCW 28A.415.020(6) in first peoples' language, culture and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

(7) Notwithstanding any provision of this chapter to the contrary, individuals who serve as scorers for the Washington teacher performance assessment shall receive the equivalent of ten continuing education credit hours for each four assessments scored, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment shall receive the equivalent of ten continuing education credit hours.

(8) Notwithstanding any provision of this chapter to the contrary, individuals who serve as scorers for the Washington ProTeach Portfolio assessment shall receive the equivalent of ten continuing education credit hours for completing one full scoring session during a calendar year, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Individuals who receive initial training as scorers for the Washington ProTeach Portfolio assessment shall receive the equivalent of ten additional continuing education credit hours.

**WSR 16-18-011**  
**PROPOSED RULES**  
**BOARD FOR VOLUNTEER**  
**FIREFIGHTERS AND RESERVE OFFICERS**

[Filed August 25, 2016, 12:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-062.

Title of Rule and Other Identifying Information: Filing appeals.

Hearing Location(s): Yakima Convention Center, Room A, 10 North 8th Street, Yakima, WA 98901, on October 27, 2016, at 6:00 p.m.

Date of Intended Adoption: October 27, 2016.

Submit Written Comments to: Brigette K. Smith, P.O. Box 114, Olympia, WA 98507, e-mail brigettes@bvff.wa.gov, fax (360) 586-1987, by October 14, 2016.

Assistance for Persons with Disabilities: Contact Brigette K. Smith by October 14, 2016, TTY (360) 753-7318.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 491-04 WAC to remove conflicting sections and more accurately reflect board processes.

Reasons Supporting Proposal: Attorneys have challenged the current rules and asked for changes [to] remove and correct conflicting sections of chapter 491-04 WAC.

Statutory Authority for Adoption: RCW 41.24.290(2).

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

Name of Proponent: Board for volunteer firefighters and reserve officers, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brigette K. Smith, 605 11th Avenue S.E., Suite #112, Olympia, WA 98501, (360) 753-7318.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact to small business.

A cost-benefit analysis is not required under RCW 34.05.328. Relates only to internal governmental operations, RCW 34.05.328 (5)(b)(ii).

August 25, 2016  
Brigette K. Smith  
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-21-050, filed 10/11/13, effective 11/11/13)

**WAC 491-04-190 What are the timing requirements for the filing of ~~((pre-hearing))~~ prehearing briefs and supporting evidence?** You must file your ~~((pre-hearing))~~ prehearing brief, along with any evidence that you believe supports your position in accordance with the filing requirements set forth in WAC 491-04-060.

(1) A ~~((pre-hearing))~~ prehearing brief should be a summary of the points that you want to make regarding your case. Specific exhibits should be referenced to make it easier for the board to follow your case.

(2) Include all evidence you want the board to consider. This could include, but is not limited to, medical reports or accident reports for injury claims, or training records or response records for service credit claims. ~~((All evidence must meet the requirements in WAC 491-04-180.))~~

(3) Your ~~((pre-hearing))~~ prehearing brief and all evidence must be filed to the board and all parties to the action, no less than fourteen ~~((14))~~ days prior to the scheduled hearing date.

(4) All parties may, upon review of all evidence, file a response to a party's ~~((pre-hearing))~~ prehearing brief to the board and all parties involved no later than seven ~~((7))~~ days prior to the scheduled hearing date.

AMENDATORY SECTION (Amending WSR 13-21-050, filed 10/11/13, effective 11/11/13)

**WAC 491-04-240 What is the role of the state board in an appeal?** (1) The board chair, or his or her designee, shall have the authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;  
 (c) Issue subpoenas pursuant to RCW 51.52.100;  
 (d) Rule on procedural matters, objections, and motions;  
 (e) Rule on motions for summary judgment;  
 (f) Rule on offers of proof and receive relevant evidence;  
 (g) Determine the total time allowed for both parties to present oral testimony and oral argument during hearing before the board;

(h) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing; and

~~((h))~~ (i) Permit or require oral argument or briefs and determine the time limits for submission.

(2) All board members shall have the authority to:

(a) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter; and

(b) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 491-04-180 Can new evidence be submitted for the hearing?

**WSR 16-18-055**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed August 31, 2016, 2:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-089.

Title of Rule and Other Identifying Information: Birth Evidence: WAC 415-106-610 How do I apply for retirement benefits? and 415-112-507 How do I apply for retirement benefits?

Hearing Location(s): Department of Retirement Systems (DRS), Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Tuesday, October 11, 2016, at 10:30 a.m.

Date of Intended Adoption: October 11, 2016.

Submit Written Comments to: Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, e-mail [jilenes@drs.wa.gov](mailto:jilenes@drs.wa.gov), fax (360) 753-3166, by October 10, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by October 7, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on an analysis of DRS' benefit recalculation process through a lean project, it was determined that gathering proof of age documents is almost always redundant and unnecessary for mem-

bers, since this information is already in the member's retirement file having been received from the member's employer. Not requiring a proof of age document was estimated to eliminate having to perform about three hundred ninety-one recalculations a year. DRS may still require a member to submit proof of age documentation in cases where there is a need for further clarity, such as when the date of birth on the retirement application does not match the date of birth in the member's retirement file.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Zan Johnston, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7049; and Implementation: Seth Miller, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

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

August 31, 2016

Jilene Siegel

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

**WAC 415-106-610 How do I apply for retirement benefits?** You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's web site or by submitting to the department:

(1) A completed, signed and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-106-600.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's notarized signature indicating consent to the retirement option you selected.

(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-106-600 (2)(c), option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.37.170 (2)(a).

(ii) Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date.

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your ~~((certified))~~ birth certificate, passport(=) or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If



you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

AMENDATORY SECTION (Amending WSR 05-12-108, filed 5/27/05, effective 6/27/05)

**WAC 415-112-507 How do I apply for retirement benefits?** ~~((~~⊕~~))~~ You should apply for retirement benefits((~~-you must submit the following~~)) at least thirty days before your intended retirement date. You can apply online at the department's web site or by submitting to the department:

(1) A completed, signed, and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-112-493.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's notarized signature indicating consent to the retirement option you selected. See WAC 415-112-015(10).

(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-112-504 (3)(d) for Plan 1 or WAC 415-112-505 (2)(c) for Plan 2 and 3 members, option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.32.530(2), 41.32.785(2), and 41.32.851(2).

(ii) ~~((If you are married, but have had a prior dissolution decree on file with the department designating a survivor beneficiary under RCW 41.50.790, spousal consent is not required. The dissolution decree must have been filed at least thirty days prior to your retirement;))~~ Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date.

(2) Evidence of your birth date, only if requested by the department, such as a ~~((~~certified copy~~))~~ photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department((~~-and~~)). If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

**WSR 16-18-060**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)  
 [Filed September 1, 2016, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-14-051.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-444-0035 Who is exempt from the ABAWD time limits and minimum work requirements?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>) on October 11, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 12, 2016.

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 5:00 p.m., October 11, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by September 27, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments proposed under this filing will strike provisions pertaining to food assistance program for legal immigrants (FAP) that are inconsistent with state law for the supplemental nutrition assistance program (SNAP).

Reasons Supporting Proposal: The United States Department of Agriculture, Food and Nutrition Service (FNS) enforces the provisions of the federal SNAP as enacted in the 2008 Food and Nutrition Act as amended and codified in the Code of Federal Regulations (C.F.R.). DSHS incorporates regulations from the federal agencies, exercises state options, and implements approved waivers and demonstration projects by adoption [of] administrative rules for food assistance administered as the Washington basic food program and FAP.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 7 C.F.R. 273.7.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Corinna Adams, 712 Pear Street, Olympia, WA 98501, (360) 725-4640.

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. It only impacts DSHS clients.

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."

August 31, 2016  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-046, filed 1/27/16, effective 2/27/16)

**WAC 388-444-0035 Who is exempt from ~~((the))~~ ABAWD time limits and minimum work requirements?** Some ~~((persons receiving))~~ people who receive basic food are exempt from ~~((ABAWD))~~ able-bodied adult without dependents (ABAWD) time limits and minimum work requirements. You are exempt from ~~((the))~~ ABAWD time limits and work requirements ~~((and time limits))~~ under WAC 388-444-0030 if you ~~((are))~~ meet any one or more of the following:

(1) You are under age eighteen or are age fifty ~~((years of age))~~ or older;

(2) ~~((Receiving))~~ You receive temporary or permanent disability benefits issued by a governmental or private source;

(3) You are obviously mentally or physically unfit for employment as determined by the department~~((:));~~ however, if the unfitness is not obvious, you must provide a statement that you are physically or mentally unfit for employment from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, ~~((a))~~ licensed or certified psychologist, ~~((a))~~ social worker, or any other medical personnel ~~((we determine is))~~ the department determines appropriate~~((, that you are physically or mentally unfit for employment.))~~;

(4) You are an adult in a basic food assistance unit that has a family member who is under the age of eighteen;

(5) You are pregnant;

(6) ~~((Living))~~ You live in an area approved as exempt by U.S. Department of Agriculture (USDA);

(7) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(8) You are applying for or ~~((receiving))~~ currently receive unemployment compensation;

(9) You are a student enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) Training program; or

(c) Institution of higher education~~((A student enrolled in higher education must))~~ and you meet the requirements ~~((under))~~ of WAC 388-482-0005 ~~((in order to be eligible for Basic Food.))~~ regarding basic food eligibility;

(10) You are participating in a chemical dependency treatment and rehabilitation program;

(11) You are employed a minimum of thirty hours per week or ~~((receiving))~~ receive weekly earnings ~~((which))~~ that equal the federal minimum hourly rate multiplied by thirty hours;

(12) You are eligible for one of the ~~(((-))~~ approved exemption slots under the ~~((USDA))~~ U.S. Department of Agriculture (USDA) fifteen percent exemption rule; or

(13) ~~((A recipient of the state-funded food assistance program (FAP) under WAC 388-400-0050; or~~

~~((14))~~ You are otherwise exempt from work requirements under WAC 388-444-0010.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## WSR 16-18-061

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 1, 2016, 3:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-15-012.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-444-0075 What are the penalties if I quit a job or reduce my work effort without good cause?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on October 11, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 12, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., October 11, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by September 27, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment will reduce the penalty period for applying for basic food from sixty days to thirty days after voluntarily quitting a job or reducing work effort without good cause.

Reasons Supporting Proposal: DSHS incorporates regulations from federal agencies, exercises state options, and implements approved waivers and demonstration projects by adopting administrative rules for the federal supplemental nutrition assistance program (SNAP) administered as the Washington basic food program. DSHS adopts rules for cash assistance conforming to federal regulations under Title 45 C.F.R., Title IV-A of the Social Security Act, Title 74 RCW, and the approved TANF state plan.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 7 C.F.R. 273.7.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Corinna Adams, 712 Pear Street, Olympia, WA 98501, (360) 725-4640.

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. It only impacts DSHS clients.

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."

August 31, 2016  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-056 and 13-21-126, filed 11/26/13 and 10/22/13, effective 12/27/13 and 11/22/13)

**WAC 388-444-0075 What are the penalties if ((~~if~~) you quit a job or reduce ((~~my~~) your work effort without good cause?** (1) If you have applied for basic food and have voluntarily quit a job or reduced your work effort as defined under WAC 388-444-0065 without good cause within ((~~sixty~~) thirty) days before applying for basic food, we will deny your application and ((~~you must have~~) impose) a penalty period as described under subsection (3) of this section from the date of your application.

(2) If you already receive basic food and ((~~you~~) quit your job or reduce your work effort without good cause, we will send you a letter notifying you that you will be disqualified from basic food. The disqualification in subsection (3) of this section begins the first of the month following ((~~the~~) our) notice of adverse action.

(3) You are disqualified for the following minimum periods of time and until the conditions in subsection (4) of this section are met:

(a) For the first quit or reduction of work effort, one benefit month;

(b) For the second quit or reduction of work effort, three benefit months; and

(c) For the third or subsequent quit or reduction of work effort, six benefit months.

(4) You may reestablish eligibility after serving the disqualification period if you comply with the work requirements under WAC 388-444-0005 and are otherwise eligible.

(5) If you become exempt from work registration under WAC 388-444-0010, we will end your disqualification for a job quit or reduction of work effort ((~~unless you are exempt because you are applying for or receiving unemployment compensation (UC), or participating in an employment and training program under TANF~~)).

(6) If you are exempt or requalify due to participation in unemployment compensation (UC) or temporary assistance

for needy families (TANF), you must meet the work requirements in these programs to remain eligible for basic food.

(7) If you are disqualified, and move from the assistance unit, and join another assistance unit, we will continue to treat you as an ineligible member of the new assistance unit for the remainder of the disqualification period.

**WSR 16-18-070**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed September 2, 2016, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-14-070.

Title of Rule and Other Identifying Information: WAC 246-310-020 Applicability of chapter 246-310 WAC, the department of health (department) is proposing revisions addressing the expansion of certificate of need (CoN)-approved ambulatory surgical facility (ASF) operating rooms.

Hearing Location(s): Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on October 19, 2016, at 1:00 p.m.

Date of Intended Adoption: October 26, 2016.

Submit Written Comments to: Katherine Hoffman, Certificate of Need, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2321, by October 19, 2016.

Assistance for Persons with Disabilities: Contact Katherine Hoffman by October 12, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The addition of operating rooms to an existing CoN-approved ASF within a designated planning area is currently not specifically addressed in WAC 246-310-020. The proposed rule revision would specify that the addition of operating rooms to existing CoN-approved ASF constitutes the construction, development or other establishment of a new health care facility pursuant to RCW 70.38.105 (4)(a).

Reasons Supporting Proposal: Previously, the department allowed ASFs to add a small number of operating rooms without CoN review. The department found this was inconsistent with the intent and purpose of RCW 70.38.105 (4)(a). In 2014, representatives of an ASF requested a technical assistance meeting with the department about the significant expansion of their CoN-approved ASF, and were advised a CoN was required. The ASF challenged the department's statutory interpretation of RCW 70.38.105 (4)(a) in Thurston County superior court. The court ordered that the department's interpretation should be in rule to be enforceable.

Statutory Authority for Adoption: RCW 70.38.135.

Statute Being Implemented: RCW 70.38.105.

Rule is necessary because of state court decision, *The Polyclinic and Swedish Health Services v. Department of Health*, Thurston County Superior Court Cause #14-2-01413-6.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Katherine Hoffman, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2979.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Katherine Hoffman, P.O. Box 47852, 111 Israel Road S.E., Tumwater, WA 98504-7852, phone (360) 236-2979, fax (360) 236-2321, e-mail katherine.hoffman@doh.wa.gov.

September 2, 2016  
 Kristin Peterson, JD  
 Government Relations Director  
 for John Wiesman, DrPH, MPH  
 Secretary

**AMENDATORY SECTION** (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

**WAC 246-310-020 Applicability of chapter 246-310 WAC.** (1) ~~The ((following undertakings shall be subject to the provisions of chapter 246-310 WAC, with the exceptions provided for in this section.))~~ rules of this chapter apply to the following:

(a) The construction, development, or other establishment of a new health care facility:

(i) No new health care facility may be initiated as a health service of an existing health care facility without certificate of need approval as a new health care facility;

(ii) The provision of services by a home health agency or hospice to a county, on a regular and ongoing basis, that was not previously included in the home health agency or hospice service area shall be considered the development of a new home health agency or hospice;

(iii) Any certificate of need approved ambulatory surgical facility expanding the number of operating rooms is considered the construction, development or other establishment of a new ambulatory surgical facility. A certificate of need approved ambulatory surgical facility may not operate more than the number of operating rooms approved by the department identified on its certificate of need or approved in the department evaluation. However, expansion of the number of certificate of need approved operating rooms does not require certificate of need approval if the expansion:

(A) Was completed without certificate of need approval prior to the effective date of these rules; or

(B) Received approval to begin construction from department of health construction review services prior to the effective date of these rules.

(b) The sale, purchase, or lease of part or all of any existing hospital licensed under chapter 70.41 RCW or a psychiatric hospital licensed under chapter 71.12 RCW;

(c) A change in bed capacity of a health care facility increasing the total number of licensed beds or redistributing beds among acute care, nursing home care, and assisted liv-

ing facility care, as defined under RCW 18.20.020, if the bed redistribution is effective for a period in excess of six months;

(d) Any new tertiary health services offered in or through a health care facility, and not offered on a regular basis by, in, or through such health care facility within the twelve-month period prior to the time the facility will offer such services:

(i) Tertiary services include the following:

(A) Specialty burn services. This is a service designed, staffed, and equipped to care for any burn patient regardless of the severity or extent of the burn. All staff and equipment necessary for any level of burn care are available;

(B) Intermediate care nursery and/or obstetric services level II. Intermediate care nursery is defined in chapter 246-318 WAC. A level II obstetric service is in an area designed, organized, equipped, and staffed to provide a full range of maternal and neonatal services for uncomplicated patients and for the majority of complicated obstetrical problems;

(C) Neonatal intensive care nursery and/or obstetric services level III. Neonatal intensive care nursery is defined in chapter 246-318 WAC. A level III obstetric service is in an area designed, organized, equipped, and staffed to provide services to the few women and infants requiring full intensive care services for the most serious type of maternal-fetal and neonatal illnesses and abnormalities. Such a service provides the coordination of care, communications, transfer, and transportation for a given region. Level III services provide leadership in preparatory and continuing education in prenatal and perinatal care and may be involved in clinical and basic research;

(D) Transplantation of specific solid organs, including, but not limited to, heart, liver, pancreas, lung, small bowel and kidney and including bone marrow. A transplantation service for each solid organ is considered a separate tertiary service;

(E) Open heart surgery and/or elective therapeutic cardiac catheterization including elective percutaneous transluminal coronary angioplasty (PTCA). Open heart surgery includes the care of patients who have surgery requiring the use of a heart lung bypass machine. Therapeutic cardiac catheterization means passage of a tube or other device into the coronary arteries or the heart chambers to improve blood flow. PTCA means the treatment of a narrowing of a coronary artery by means of inflating a balloon catheter at the site of the narrowing to dilate the artery;

(F) Inpatient physical rehabilitation services level I. Level I rehabilitation services are services for persons with usually nonreversible, multiple function impairments of a moderate-to-severe complexity resulting in major changes in the patient's lifestyle and requiring intervention by several rehabilitation disciplines. Services are multidisciplinary, including such specialists as a rehabilitation nurse; and physical, occupational, and speech therapists; and vocational counseling; and a physiatrist. The service is provided in a dedicated unit with a separate nurses station staffed by nurses with specialized training and/or experience in rehabilitation nursing. While the service may specialize (i.e., spinal cord injury, severe head trauma, etc.), the service is able to treat all persons within the designated diagnostic specialization regardless of the level of severity or complexity of the impairments and include the requirements as identified in

chapter 246-976 WAC relating to level I trauma rehabilitation services;

(G) Specialized inpatient pediatric services. The service is designed, staffed, and equipped to treat complex pediatric cases for more than twenty-four hours. The service has a staff of pediatric specialists and subspecialists.

(ii) The department shall review, periodically revise, and update the list of tertiary services. The department shall change the tertiary services list following the procedures identified in WAC 246-310-035;

(iii) The offering of an inpatient tertiary health service by a health maintenance organization or combination of health maintenance organizations is subject to the provisions under chapter 246-310 WAC unless the offering is exempt under the provisions of RCW 70.38.111.

(e) Any increase in the number of dialysis stations in a kidney disease center;

(f) Any capital expenditure in excess of the expenditure minimum for the construction, renovation, or alteration of a nursing home. However, a capital expenditure, solely for any one or more of the following, which does not substantially affect patient charges, is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (f)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, not for use in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home involving physical plant facilities, including administrative, dining, kitchen, laundry, and therapy areas, or support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land;

(viii) Refinancing of existing debt; and

(ix) Nursing home project granted a replacement authorization under WAC 246-310-044.

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking subject to the provisions under chapter 246-310 WAC and any arrangement or commitment made for financing such undertaking;

(h) No person may divide a project in order to avoid review requirements under any of the thresholds specified under this section; and

(i) The department may issue certificates of need authorizing only predevelopment expenditures, without authorizing any subsequent undertaking for which the predevelopment expenditures are made.

(2) No person shall engage in any undertaking subject to certificate of need review unless:

(a) A certificate of need authorizing such undertaking is issued and remains valid; or

(b) An exemption is granted in accordance with the provisions of this chapter.

(3) If a nursing home or portion of a nursing home constructed or established under the authority of a certificate of need granted from the pool of nursing home beds for ethnic minorities according to the provisions of WAC 246-310-135 is sold or leased within ten years to a party not eligible for an award of such beds under the provisions of WAC 246-310-136(2):

(a) The purchaser or lessee may not operate those beds as nursing home beds without first obtaining a certificate of need for new beds; and

(b) The beds that were awarded from the special pool shall be returned to that pool.

## WSR 16-18-075

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed September 6, 2016, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-049.

Title of Rule and Other Identifying Information: Retail sales and use tax exemption criteria for clean alternative fuel vehicles.

Hearing Location(s): Highways-Licenses Building, 1125 Washington Street S.E., Conference Room 413, Olympia, WA 98507 (check in at counter on first floor), on October 12, 2016, at 3:00 p.m.

Date of Intended Adoption: October 13, 2016.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail [cholloway@dol.wa.gov](mailto:cholloway@dol.wa.gov), fax (360) 570-7048, by October 11, 2016.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by October 11, 2016, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2ESHB 2778, enacted by the 2016 legislature, requires that the department of licensing adopt a rule to determine the lowest manufacturer's retail price for base model clean alternative fuel vehicles for purposes of retail and use tax exemption criteria set by statute. This rule making will make an emergency rule, WAC 308-04-030, permanent.

Reasons Supporting Proposal: Required by recent legislation.

Statutory Authority for Adoption: RCW 82.08.809 and 82.12.809.

Statute Being Implemented: RCW 82.08.809 and 82.12.809.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3) due to the provisions of RCW 34.05.310 (4)(b).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

September 6, 2016  
Damon Monroe  
Rules Coordinator

#### NEW SECTION

**WAC 308-04-030 Retail sales and use tax exemption criteria for clean alternative fuel vehicles.** For the purposes of RCW 82.08.809 and 82.12.809:

(1) The lowest manufacturer's retail price for a base model vehicle is the one provided by a vendor selected by the department;

(2) The department publishes and periodically updates a list of all vehicle models qualifying for the sales and use tax exemptions under those sections; and

(3) The list of qualifying vehicle models is available on the department's web site.

As used in this section, "base model" means the least expensive and least optioned model of a qualifying vehicle identified in RCW 82.08.809 (1)(a) and 82.12.809 (1)(a).

**WSR 16-18-077  
PROPOSED RULES  
BOARD OF  
PILOTAGE COMMISSIONERS**

[Filed September 6, 2016, 8:50 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 363-116-185 Pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on October 20, 2016, at 1:00 p.m.

Date of Intended Adoption: October 20, 2016.

Submit Written Comments to: Sheri Jeanne Tonn, Chair, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail [larsonp@wsdot.wa.gov](mailto:larsonp@wsdot.wa.gov), fax (206) 515-3906, by October 13, 2016.

Assistance for Persons with Disabilities: Contact Shawna Erickson by October 17, 2016, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a 2017 Grays Harbor pilotage district annual tariff.

The proposal as detailed calls for the following adjustment: *Pension Charge*: An increase from \$463 to \$528.\*

\* As the administrator of Grays Harbor pension funds for retired Grays Harbor pilots, Puget Sound pilots provides this calculation.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: RCW 88.16.035.

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: Current rates for the Grays Harbor pilotage district expire on December 31, 2016. New rates must be set accordingly.

All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

Name of Proponent: Port of Grays Harbor, public.

Name of Agency Personnel Responsible for Drafting: Peggy Larson, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the proposed revisions is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

September 6, 2016  
Peggy Larson  
Executive Director

AMENDATORY SECTION (Amending WSR 15-24-029, filed 11/20/15, effective 1/1/16)

**WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.** Effective 0001 hours January 1, (~~2016~~) 2017, through 2400 hours December 31, (~~2016~~) 2017.

**CLASSIFICATION** **RATE**  
 Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

**Draft and Tonnage Charges:**

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.

Draft	\$114.97 per meter
	or
	\$35.04 per foot
Tonnage	\$0.329 per net registered ton
Minimum Net Registered Tonnage	\$1,152.00
Extra Vessel (in case of tow)	\$646.00

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$6,387.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.

**Boarding Charge:**

Per each boarding/deboarding from a boat or helicopter	\$1,092.00
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**Harbor Shifts:**

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	\$803.00
Delays per hour	\$189.00
Cancellation charge (pilot only)	\$315.00
Cancellation charge (boat or helicopter only)	\$944.00

**Two Pilots Required:**

When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of \$803.00 and in addition, when a bridge is transited the bridge transit charge of \$346.00 shall apply.

**Pension Charge:**

Charge per pilotage assignment, including cancellations	<del>\$(463.00)</del> <u>528.00</u>
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**Travel Allowance:**

Transportation charge per assignment	\$105.00
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Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$1,064.00 for each day or fraction thereof, and the travel expense incurred.

**Bridge Transit:**

Charge for each bridge transited	\$346.00
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam	\$946.00

**Miscellaneous:**

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

**WSR 16-18-078**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed September 6, 2016, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-058.

Title of Rule and Other Identifying Information: The department is adding new sections to chapter 388-71 WAC, Home and community services and programs, amending chapter 388-106 WAC, Long-term care services, and adding new chapter 388-114 WAC, Travel time and work week limitations for individual providers.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on October 11, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 12, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., October 11, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by September 27, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In the *Home Care Association of America, et. al. v. David Weil, et al.* decision by the United States Court of Appeals, United States, for the District of Columbia, the court upheld new United States Department of Labor overtime rules. The new rules may require the department to pay overtime to individual providers who work more than forty hours per week. In order to ensure the cost-effective use of state funds and to maximize effective use of limited resources, the department is considering the adoption of rules related to the implementation of overtime. The rules may include, but are not limited to, rules that (1) describe the number of hours the department may approve an individual provider to work in a work week; (2) describe when the department may approve an individual provider to work more than the work week limit; (3) describe DSHS client and IP responsibilities; (4) describe how the department will respond when individual providers work more service hours than the work week limit; and (5) describe how travel time is approved and authorized. These rules are necessary to implement payment of overtime in an effective and cost-effective manner.

For the purpose of clarity, the proposed rules may define terms that are currently used, or will be used, in chapters 388-71 and 388-106 WAC.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.39A.400.

Rule is necessary because of federal court decision, in the *Home Care Association of America, et. al v. David Weil*.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Barbara Hanneman, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2525.

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 nonprofits 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.

September 1, 2016  
Katherine I. Vasquez  
Rules Coordinator

NEW SECTION

**WAC 388-71-0507 What responsibilities do clients have related to individual provider work week limits?** Clients must comply with WAC 388-114-0090.

NEW SECTION

**WAC 388-71-0518 What responsibilities do individual providers have related to work week limitation?** Individual providers must comply with WAC 388-114-0100.

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

**WAC 388-106-1458 How do I create and use my spending plan?** (1) You create your spending plan with the assistance of the care consultant using the new freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the care consultant.

(3) You and your care consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month). The value of those units is deducted from your new freedom budget. The rest of funds can be used for other covered goods and services or saved.

~~((a))~~ (4) Once a service month begins, the number of personal care units may not be altered during that month.

~~((b))~~ (5) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

~~((c))~~ (6) Prior to the service month, you may elect to use savings funds to buy additional personal care.

~~((d))~~ (7) You ~~((can))~~ may choose to have your personal care provided by an individual provider (IP) or a home care agency. Each unit will be deducted from your new freedom budget at the average IP wage rate including mileage. Sub-



section (11) of this section describes when the department is responsible for any extra costs for overtime payments to your individual provider and when you must pay the extra costs out of your monthly budget.

~~((e))~~ (8) The balance of your individual new freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

~~((f))~~ (9) If you have a change of condition or situation and your new freedom budget increases due to a new assessment or exception to rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

~~((g))~~ (10) You may assign your predetermined personal care units to a different provider during the month of service.

(11) The responsibility for paying the extra cost of overtime, which under chapter 388-114 WAC may be paid to providers who work as individual providers for one or more department clients when they work more than forty hours in a work week, is as follows:

(a) If the department approves the individual provider to work more than forty hours per week, the department will pay the extra cost for overtime up to the number of service hours the individual provider is approved to work and the payment for these extra costs will not be charged to your budget; and

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

## Chapter 388-114 WAC

### TRAVEL TIME AND WORK WEEK LIMITATIONS FOR INDIVIDUAL PROVIDERS

#### NEW SECTION

**WAC 388-114-0010 What is the purpose of this chapter?** The purpose of this chapter is to describe:

- (1) The number of hours the department may approve an individual provider to work in a work week;
- (2) How the department determines work week limitations;
- (3) When the department may approve an individual provider to work more than the work week limit;
- (4) Client responsibilities regarding work week limits;
- (5) Individual provider responsibilities around work week limits;
- (6) What happens when a family or household member works more hours than are authorized in the client's plan of care;
- (7) What happens when an individual provider works more than the work week limit or submits claims for unauthorized travel time;
- (8) How the department approves and authorizes travel time; and
- (9) Travel time limitations.

#### NEW SECTION

**WAC 388-114-0020 What definitions apply to this chapter?** The following definitions apply to chapter 388-114 WAC:

**"Approve"** means the department, either in advance or after the fact, has reviewed the circumstances, applied the rules in this chapter, and has authorized the individual provider to work more than forty hours in a work week.

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

**"Household member"** means the individual provider lives with the client and has a relationship with the client that existed before the client was assessed and approved for department paid personal care services as defined in WAC 388-106-0010.

**"Overtime"** means the number of hours an individual provider works in a work week that is more than forty hours. When required by law, the overtime wage is one and one half times the individual provider's regular wage rate. Paid time off does not accrue as overtime pay.

**"Service hours"** means the time individual providers are paid by the department to provide personal care, relief care, skills acquisition training, or respite services under medicaid state plan and 1915(c) waiver programs, roads to community living, the veterans directed home services program, and programs solely funded by the state. Service hours do not include hours paid for training, travel, or paid time off.

**"Travel time"** means the direct one way travel time from one worksite to another in the same workday. Direct one way travel is the amount of time it takes to travel the most direct route between two specific worksites on the same day, as verified by using an online mapping tool.

**"Worksite"** means the location where an individual provider provides authorized care to a department client or attends required training. An individual provider's residence is not a worksite for the purposes of travel time, whether or not the client lives there.

**"Work week"** begins at 12:00 a.m. Sunday morning and ends at 11:59 p.m. the following Saturday night.

**"Work week limit"** means the total number of service hours an individual provider may provide in a work week. Travel and training hours are not included in the work week limit.

#### NEW SECTION

**WAC 388-114-0040 How many hours may the department approve an individual provider to work in a work week?** (1) The department may not approve an individual provider to work more than a total of forty hours per work week, unless:

- (a) The individual provider has a higher work week limit as described under WAC 388-114-0030;
- (b) The authorization of additional hours would not exceed any expenditure limitations under RCW 74.39A.270 (10); and
- (c) The individual provider has a higher work week limit because:

(i) The department determined that the additional hours are necessary for the client for one of the reasons listed in WAC 388-114-0080;

(ii) It is allowable travel time as described in WAC 388-114-0130 and WAC 388-114-0140; or

(iii) The individual provider attends required training during the work week.

(2) The limitations of this section will apply to individual providers who were paid for one hundred and seventy-four or more service hours in January 2016 after the department reviews the plans of care for the individual provider's employers. The department will notify individual providers in this group of their work week limit once the department has completed the reviews.

#### NEW SECTION

**WAC 388-114-0030 How does the department determine an individual provider's work week limit?** (1) An individual provider's work week limit is forty service hours per week, unless the department approves a higher work week limit as described in this chapter.

(2) Subject to any expenditure limitations required by RCW 74.39A.270(10), if the department paid the individual provider for one hundred and seventy-four or more service hours of work in January 2016, the individual provider's work week is calculated by dividing the individual provider's January paid service hours by 4.33 and rounding to the nearest quarter hour. However, an individual provider's maximum work week limit cannot exceed sixty-five hours regardless of the number of service hours the individual provider worked in January 2016. Beginning July 1, 2017, the maximum work week limit will be reduced to sixty service hours.

#### NEW SECTION

**WAC 388-114-0050 What if the service hours the individual provider was paid for in January 2016 does not accurately represent the individual provider's work history in February and March 2016?** (1) If the individual provider's service hours paid in January 2016 do not accurately represent the individual provider's work history for the first three months of 2016, the individual provider may appeal the determination by submitting a request to the client's case manager by August 31, 2016.

(2) The department will consider an appeal if:

(a) The individual provider was contracted with the department;

(b) The individual provider was employed by a client in January 2016; and

(c) The total monthly service hours the individual provider was paid in January 2016 is less than the total monthly service hours the individual provider was paid in either February or March 2016 and the average in those months was above forty hours.

(3) The department will not consider an appeal request from an individual provider who was not contracted with the department or was not employed by a client in January 2016.

(4) The department will evaluate individual provider service hours appeals as follows:

(a) Calculate the individual provider's average number of weekly service hours paid in January 2016 by dividing the total January service hours paid by 4.33 which is the average number of weeks in a month;

(b) Calculate the average number of weekly service hours the individual provider was paid for February and March 2016 as follows:

(i) The average weekly service hours for February equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month;

(ii) The average weekly service hours for March equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month; and

(iii) Add the average weekly service hours for February and March 2016 together and divide the total by two to get the average weekly service hours for February and March; and

(c) If the average weekly service hours for January 2016 is less than the average weekly service hours for February and March 2016, the department will use the average weekly service hours for February and March 2016 as the individual provider's weekly service hour limit.

#### NEW SECTION

**WAC 388-114-0060 How will the client and individual provider know the individual provider's work week limit?** (1) The department will send a notification of the individual provider's work week limit, as determined under WAC 388-114-0030, to the individual provider and to the clients associated with the individual provider.

(2) The department will send a notification to the client and associated individual provider if the department approves additional service hours to the client under WAC 388-114-0080.

#### NEW SECTION

**WAC 388-114-0070 May an individual provider work more than his or her work week limit?** An individual provider with a work week limit of more than forty service hours has flexibility to work more than his or her work week limit in a given week if:

(1) Requested by the client to meet a specific need;

(2) Doing so would not exceed the client's monthly authorized hours;

(3) The total number of service hours worked over forty for each work week in a calendar month does not exceed the amount of overtime the individual provider would receive if he or she worked his or her work week limit every week of the calendar month; and

(4) The use of more service hours in a given week will not result in a client going without essential care in other weeks of the month.

#### NEW SECTION

**WAC 388-114-0080 When may the department approve an individual provider to work more than the work week limits in WAC 388-114-0040?** (1) In addition to the increased work week limits allowed under WAC 388-

114-0030, the department may approve additional service hours to an individual provider's work week limit if it finds the increase is necessary:

(a) Due to lack of available providers who are able to adequately meet a client's care needs, as evaluated by the department in its consideration of:

(i) The overall availability of providers in the geographic region;

(ii) Whether the client has complex medical or behavioral needs;

(iii) Whether the client requires a provider with specific language skills; and

(iv) The client's good faith efforts and cooperation to manage his or her service hours and locate and select additional providers, which must include:

(A) Making schedule adjustments within the work week limits of current providers who are providing your services;

(B) Seeking a qualified family or friend to contract as an individual provider;

(C) Utilizing the home care referral registry; and

(D) Requesting a worker through a home care agency, unless doing so would cost more than paying the individual provider overtime;

(b) To protect a client's health and safety, as evaluated by the department in its consideration of:

(i) Whether the request is to approve service hours the individual provider spent caring for the client because of an emergent condition;

(ii) The nature and severity of the emergent condition; and

(iii) Whether the need could have been postponed until another provider could have arrived;

(c) To serve the client's needs in the most efficient and economic manner; or

(d) To prevent an increased risk that the client will be unable to remain in a home or community based setting, except in cases where there are additional qualified providers available to select and the client has chosen not to select them.

(2) When a department approved increase to an individual provider's work week limit is no longer needed by the client, the individual provider's work week limit will revert to the level described in WAC 388-11-0030.

(3) The department will not approve additional service hours to an individual provider's work week limit that would exceed the client's monthly service hours limit or is more than eighty service hours per week for an individual provider.

#### NEW SECTION

**WAC 388-114-0090 How does the individual provider work week limits affect the client's responsibilities listed in WAC 388-70-0505?** In addition to the responsibilities detailed in WAC 388-71-0505, the client must:

(1) Manage his or her individual providers' work time to stay within each individual provider's total work week limit described in this chapter and within the total number of monthly authorized hours in the client's plan of care;

(2) Contact his or her case manager and participate in the search, selection, and hiring of additional providers when necessary to comply with subsection (1) of this section; and

(3) Choose a different provider when an individual provider is already working for one or more clients and the individual provider would exceed his or her work week limit by working for the client.

#### NEW SECTION

**WAC 388-114-0100 How does the individual provider work week limits affect the individual provider's responsibilities in WAC 388-71-0515?** In addition to the responsibilities detailed in WAC 388-71-0515, the individual provider must:

(1) Communicate and coordinate with each of his or her clients about how many service hours the individual provider is allowed and available to work each week; and

(2) Not accept assignments or changes in schedules for clients that would require the individual provider to work more than his or her work week limit unless it is to respond to an unexpected health or safety need of the client that cannot be postponed.

#### NEW SECTION

**WAC 388-114-0110 What happens when an individual provider, who is a family member or household member, provides more care or services than authorized in the client's plan of care?** The department will not pay an individual provider who is also a family or household member for care hours or services beyond the monthly authorized hours in the client's plan of care.

#### NEW SECTION

**WAC 388-114-0120 What happens if an individual provider works more service hours in a work week than the individual provider's work week limit or claims unapproved travel or service hours?** (1) If an individual provider works more service hours in a work week than the work week limit approved by the department or submits a claim for unapproved travel or service hours, the department may take any one or more of the following actions:

(a) Contact the individual provider to discuss the client's care needs and the individual provider's responsibilities under department rules and the individual provider's contract;

(b) Provide additional technical assistance to the individual provider and the client on how to comply with department rules and the individual provider contract;

(c) Give the individual provider and the client notice that continued failure by the individual provider to comply will result in termination of the individual provider's contract; and

(d) Terminate the individual provider's contract and assist the client in finding another individual provider.

(2) Individual providers do not have a right to an administrative hearing to appeal contract terminations under this section.

NEW SECTION

**WAC 388-114-0130 How is travel time approved and authorized?** (1) Individual providers must provide an estimate of planned travel time and request approval from the department in advance of travel. The reasonableness of the request may be verified by the department using an online mapping tool.

(2) Travel time is calculated based upon the actual time to travel directly between worksites during each work day and is rounded to the nearest fifteen minutes. If more than one trip between worksites is made in a day, direct travel times are added together and rounded to the nearest fifteen minutes once each day.

(3) Regardless of the estimated travel time, individual providers may only bill for actual time spent traveling as calculated in subsection (2) of this section.

(4) If the individual provider has unexpected or unplanned travel time, the individual provider must contact the department to request approval and authorization for payment of the unplanned travel. The department will approve unplanned travel time requests related to client health and safety or due to traffic conditions outside the individual provider's control.

NEW SECTION

**WAC 388-114-0140 Are there limitations on travel time?** The department will not approve an individual provider to provide care for a client if the department determines, based on an online mapping tool, that the individual provider would regularly travel for more than sixty minutes between worksites or exceed a total of seven hours of travel time per work week.

**WSR 16-18-088****PROPOSED RULES****BENTON CLEAN AIR AGENCY**

[Filed September 6, 2016, 2:18 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation 1: Article 1 Policy, Purpose and Applicability; Article 2 General Provisions; Article 3 Industrial Source Regulations; Article 4 General Standards for Particulate Matter; Article 6 Agricultural Burning; Article 7 Solid Fuel Burning Device; Article 8 Asbestos; Article 9 Source Registration; Article 10 Fees and Charges.

Hearing Location(s): Benton Clean Air Agency (BCAA), 526 South Steptoe Street, Kennewick, WA 99336, on January 26, 2017, at 5:00 p.m.

Date of Intended Adoption: January 26, 2017, or later.

Submit Written Comments to: Robin Priddy, 526 South Steptoe Street, Kennewick, WA 99336, e-mail robin.priddy@bentoncleanair.org, fax (509) 783-6562, by November 8, 2016.

Assistance for Persons with Disabilities: Contact 711 relay or contact Robin Priddy, above, by November 1, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes in Articles 1, 2, 3, 6, 7, and 9 were primarily administrative in nature, such as including sections of RCW/WAC in Regulation 1 to consolidate and align wording with RCW/WAC or renumbering subsections for consistency throughout Regulation 1. Article 4 was updated to require notification to BCAA of projects which destabilize soil in Benton County, improving our ability to contact responsible parties of dust emissions from these projects. Article 8, concerning asbestos, was overhauled to include more thorough asbestos surveying and notification requirements, more detailed requirements concerning hazardous asbestos containing materials, more detailed work requirements for alternative means of compliance, and new regulations concerning disposal of asbestos containing materials. Articles 2 and 10 was [were] amended to remove the fee schedules for registered sources from Regulation 1 and refer to a fee schedule adopted by board resolution.

Reasons Supporting Proposal: Primarily, these changes are administrative and are proposed to make our regulation more consistent. The changes to Article 4 are proposed to ensure timely responses to dust complaints and insure we are contacting the correct parties. The changes to Article 8 will bring us into line with other regulatory agencies throughout the site and reduce conflict between our regulation and the regulations of the Washington department of labor and industries. Finally, the changes to Article 10 will prevent BCAA from needing to amend Regulation 1 for periodic changes to fees that can be approved via board resolution.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et. seq., 42 U.S.C. 7412.

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

Name of Proponent: BCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robin Priddy, 526 South Steptoe Street, Kennewick, 99336, (509) 783-1304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

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.

September 6, 2016

Robin Priddy

Director

**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 16-20 issue of the Register.

**WSR 16-18-094**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed September 7, 2016, 11:15 a.m.]

Supplemental Notice to WSR 16-10-060.

Preproposal statement of inquiry was filed as WSR 15-15-125.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-97-1090 Direct care hours and amend WAC 388-97-0001 Definitions and 388-97-1080 Nursing services.

The department held a public hearing on June 21, 2016. Comments were received and changes were made. This supplemental CR-102 reflects those changes and other edits.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on October 25, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 26, 2016.

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 5:00 p.m., October 25, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by October 11, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to assure compliance with requirements from recently passed legislation SB [SSB] 5600 and SHB 2678 (requirements originally passed through SHB 1274 and revised in SHB 2678 based on the outcome of a stakeholder workgroup).

Reasons Supporting Proposal: This amendment will align the rules with the recent changes to the statute [statute] in regards to the definitions related to vulnerable adults and staffing ratios in nursing homes.

Statutory Authority for Adoption: Chapters 18.51, 74.42 RCW.

Statute Being Implemented: Chapters 74.34, 74.42, 74.46 RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Abbott, P.O. Box 45600, Olympia, WA 98513, (360) 725-2327; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not

required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations. This rule change is related to a change in chapter 74.42 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations. This rule change is related to a change in chapter 74.42 RCW.

September 6, 2016  
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 16-19 issue of the Register.