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WSR 24-18-040 PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration) [Filed August 27, 2024, 8:22 a.m., effective October 7, 2024]

Effective Date of Rule: October 7, 2024.

Purpose: The developmental disabilities administration (DDA) amended these rules to implement 2SHB 2008, which directs DDA to remove intelligence quotient (IQ) criteria from DDA enrollment processes. Additional changes have been made to combine and repeal redundant sections in the chapter, clarify language, and update intake and eligibility processes.

Citation of Rules Affected by this Order: New WAC 388-823-0620 and 388-823-0630; repealing WAC 388-823-0720, 388-823-0730, 388-823-0770, 388-823-0940, 388-823-1000, 388-823-1030, 388-823-1090 and 388-823-1100; and amending WAC 388-823-0010, 388-823-0015, 388-823-0020, 388-823-0025, 388-823-0055, 388-823-0075, 388-823-0090, 388-823-0100, 388-823-0105, 388-823-0115, 388-823-0200, 388-823-0210, 388-823-0300, 388-823-0310, 388-823-0400, 388-823-0410, 388-823-0500, 388-823-0510, 388-823-0600, 388-823-0610, 388-823-0740, 388-823-0750, 388-823-0760, 388-823-0910, 388-823-0920, 388-823-0930, 388-823-1005, 388-823-1010, 388-823-1060, 388-823-1070, and 388-823-1080.

Statutory Authority for Adoption: RCW 71A.10.020, 71A.16.020, and 74.08.090.

Other Authority: RCW 71A.10.020, 71A.16.020, and 74.08.090. Adopted under notice filed as WSR 24-13-080 on June 17, 2024.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-823-0500, DDA changed "naturopath" to "naturopathic physician" to make use of the language used by the industry and professionals themselves.

In WAC 388-823-0300, 388-823-0600, and 388-823-0630, DDA added "naturopathic physician" as requested by community partners.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 2.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 25, Repealed 6.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 31, Repealed 8. Date Adopted: August 27, 2024.

> Katherine I. Vasquez Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-823-0010 Definitions. The following definitions apply to this chapter:

(("ABAS-II")) "ABAS" means adaptive behavior assessment system((second edition)), which is a comprehensive, norm-referenced assessment of adaptive behavior and skills of individuals from birth through age 89.

"Adaptive behavior" means age-appropriate behaviors people need to live and function independently in daily life.

(("CAS" means the DAS-Naglieri cognitive assessment system, a clinical instrument for assessing intelligence based on a battery of cognitive tasks. The test is used for children ages five through seventeen years eleven months.))

"Client" means a person ((with)) who has a developmental disability as defined in RCW 71A.10.020 and has been determined eligible for DDA under chapter 388-823 WAC ((who is currently eligible and active with the developmental disabilities administration (DDA))).

"Community first choice" or "CFC" is a medicaid state plan program defined in chapter 388-106 WAC.

(("C-TONI" means the comprehensive test of nonverbal intelligence, a battery of six subtests, designed to measure different aspects of nonverbal intellectual abilities from ages six to eighteen years eleven months.

"DAS" means differential ability scales, which is a cognitive abilities battery for children and adolescents at least age two years, six months but under age eighteen.))

"DABS" means diagnostic adaptive behavior scale, which is a comprehensive standardized assessment of adaptive behavior for people

"DDA" means the developmental disabilities administration, an administration within department of social and health services.

"Department" means the department of social and health services.

"Diagnostic report" means a report that documents evidence of a developmental or intellectual disability.

"Documentation" means written information that provides support for certain claims, such as diagnoses, test scores, or residency for the purpose of establishing DDA eligibility.

(("DSM-IV-TR" means the diagnostic and statistical manual of mental disorders, fourth edition, text revision.))

"DSM-5" means the diagnostic and statistical manual of mental disorders, fifth edition.

"Eligible" means that DDA has determined that you have a condition that meets all of the requirements for a developmental disability as set forth in this chapter.

"ESIT" means early support for infants and toddlers, a program administered by the department of ((early learning)) children, youth, and families under chapter 110-400 WAC.

"Expiration date" means a specific date that your eligibility as a client of DDA and all services paid by DDA will stop.

(("FSIQ" means the full scale intelligence quotient which is a broad measure of intelligence achieved through one of the standardized intelligence tests included in these rules. Any standard error of

measurement value will not be taken into consideration when making a determination for DDA eligibility.))

"Functional limitation" means a reduced ability or lack of ability to perform an action or activity in the manner or within the range considered to be normal.

"ICAP" means the inventory for client and agency planning. This is ((a standardized)) an adaptive behavior assessment of functional ability. The adaptive behavior section of the ICAP assesses daily living skills and the applicant awareness of when to perform these skills. ((The goal is to get a snapshot of his/her ability.

"K-ABC" means Kaufman assessment battery for children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.

"Leiter-R" means Leiter international performance scale - revised, which is an untimed, individually administered test of nonverbal cognitive ability for individuals at least age two years but under age twenty-one years.))

"Medicaid personal care" or "MPC" is a medicaid state plan program as defined in chapter 388-106 WAC.

"Necessary supplemental accommodation" means services designed to afford people equal access to DDA services as described in chapter 388-472 WAC.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

(("Nonverbal" means that you do not possess sufficient verbal skills to complete a standard intellectual test.))

"NSA" means necessary supplemental accommodations, which are services provided to you if you have a mental, neurological, physical, or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

"Review" means DDA must determine that ((a current client of DDA)) an enrolled person still meets ((all of)) the requirements for a developmental disability as set forth in this chapter.

"RHC" means a residential habilitation center operated by the DDA.

"SIB-R" means the scale of independent behavior-revised which is an adaptive behavior assessment derived from quality standardization and norming. It can be administered as a questionnaire or as a carefully structured interview, with special materials to aid the interview process.

"SOLA" means a state operated living alternative residential service for adults operated by DDA.

(("Stanford-Binet" is a battery of fifteen subtests measuring intelligence for individuals at least age two years but under age twenty-three years.))

"Termination" means an action taken by DDA that stops your DDA eligibility and services paid by DDA. If your DDA eligibility is ter-

minated your DDA authorized services will also be terminated. If you remain eligible for community first choice (CFC) or medicaid personal care (MPC) and you are under the age of ((eighteen)) 18 DDA will continue to authorize this service. If you are ((eighteen)) 18 or older CFC or MPC services will be authorized by the aging and long-term support administration.

"VABS" means Vineland adaptive behavior scales, which is an assessment to measure adaptive behavior in children from birth but under age ((eighteen)) 18 years, nine months and in adults with low functioning in four separate domains: Communication, daily living skills, socialization, and motor skills.

- (("Wechsler" means the Wechsler intelligence scale, which is an individually administered measure of an individual's capacity for intelligent behavior. There are three Wechsler intelligence scales, dependent upon the age of the individual:
- Wechsler preschool and primary scale of intelligence for children at least age three years but under age seven years;
- Wechsler intelligence scale for children at least age six years but under age sixteen years; and
- Wechsler adult intelligence scale for individuals at least age sixteen years but under age seventy-four years.

"WJ III (r) " means the Woodcock-Johnson (r) III, a test which is designed to provide a co-normed set of tests for measuring general intellectual ability, specific cognitive abilities, scholastic aptitude, oral language, and academic achievement. The WJ III(r) is used for ages two and up.))

AMENDATORY SECTION (Amending WSR 15-01-021, filed 12/5/14, effective 1/5/15)

WAC 388-823-0015 How does the state of Washington define developmental disability? The state of Washington defines developmental disability in RCW 71A.10.020($(\frac{(5)}{})$).

- (1) To qualify for DDA you must have a diagnosed condition of intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition found by DDA to be closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability which:
 - (a) Originates ((prior to)) before age ((eighteen)) 18;
 - (b) Is expected to continue indefinitely; and
 - (c) Results in substantial limitations.
- (2) In addition to the requirements listed in subsection (1) of this section, you must meet the other requirements contained in this chapter.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0020 How do I ((become a client of)) enroll with the developmental disabilities administration? (1) You ((become a client of)) may enroll with the developmental disabilities administration (DDA) if you apply for eligibility with DDA and DDA determines that

you meet all eligibility criteria required to establish a developmental disability as defined in this chapter.

- (((1))) (2) You apply to become a client of DDA by ((calling the regional)) contacting a DDA office ((or a local DDA office)) and requesting a DDA eligibility packet ((be sent to you)). You may also download, complete, and ((print the)) return an eligibility packet at ((http://dshs.wa.gov/ddd/eligible.shtml)) https://www.dshs.wa.gov/dda/ consumers-and-families/eligibility.
- $((\frac{(2)}{2}))$ (3) You must complete and return the required forms, along with ((all)) any supporting documentation that you have((, to address any disability indicated in the eligibility packet)).

AMENDATORY SECTION (Amending WSR 18-17-028, filed 8/6/18, effective 9/6/18)

- WAC 388-823-0025 Who may apply for a DDA eligibility determination? (1) You may apply for a DDA eligibility determination ((on your own behalf)) for yourself.
- (2) A person may ((submit an application)) apply for a DDA eligibility determination on your behalf if the person is:
- (a) Delegated to consent to routine medical care for you under WAC ((388-148-1560)) 110-148-1560;
 - (b) Your parent $\overline{\text{if}}$ you are under ((eighteen)) 18;
 - (c) Your caretaker relative under WAC 182-500-0020;
 - (d) Your spouse;
 - (e) Your authorized representative under WAC 182-503-0130; ((or))
- (f) Applying for you because a medical condition prevents you from applying ((on your own behalf.)); or
- (q) Someone to whom you or the courts have given permission to apply on your behalf.
- (3) If you or your ((legal)) <u>authorized</u> representative request it, DDA will withdraw your eligibility application or terminate your eligibility.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-0055 Who is responsible for obtaining ((the)) required documentation ((needed to make my eligibility determination))? (1) You are responsible ((to provide all of)) for providing the information required ((by DDA)) to ((make a determination)) determine DDA eligibility.
- (2) If you provide DDA with a signed consent form and contacts, DDA will assist in obtaining records.
- ((1) If you provide DDA with a signed consent form and the sources for obtaining the documentation DDA may be able to assist you in obtaining records.)) (3) Evidence required to make an eligibility determination includes, but is not limited to:
- (a) ((School psychologist and/or licensed psychologist evaluations)) Evaluations and reports from a school psychologist, a licensed psychologist, or both;
- (b) Evidence of ((medical diagnoses by a licensed physician,)) a qualifying condition;

- (c) ((Cognitive)) Clinical and diagnostic tests measuring a person's development and adaptive skills test results and accompanying reports $((\tau))$; and
 - (d) Mental health records.
- $((\frac{2}{2}))$ (4) DDA will not pay for $(\frac{1}{2})$ diagnostic ((assessments)), ((intelligence quotient (IQ) testing)) developmental, or adaptive skills ((testing)) assessments.
- (((3) If DDA determines that you have a qualifying condition and your records do not include an adaptive skills assessment per WAC 388-823-0710 administered within the past thirty-six months, DDA may administer the inventory of client and agency planning (ICAP) to determine your level of adaptive functioning to meet the substantial limitation requirement. DDA will administer the ICAP at no expense to you.))
- (5) If you cannot provide DDA with an adaptive assessment completed in the last 36 months, but you otherwise meet DDA eligibility criteria, DDA will offer to administer the ICAP for you at no cost.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-0075 What if I do not have written evidence that my disability began before my ((eighteenth)) 18th birthday? (1) If there is no documentation available about your ((early developmental history, educational history, illnesses, or injuries, DDA may accept verbal information from your family or others who knew you prior to the age of eighteen to verify that your disability began prior to age eighteen)) condition existing before age 18, DDA may accept an attestation - either verbal or written. The attestation must confirm your condition began before age 18 and may be from someone who knows you or a self-attestation verified by another person who knows you. The information must be specific and reliable, and it cannot substitute for documentation that could be obtained with reasonable diligence.
- (2) Additional evidence of your eligible condition and the resulting substantial limitations is still required.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-0090 How long will it take to complete a determination of my eligibility? (1) DDA has ((thirty)) up to 30 days from receipt of the final piece of $\underline{requested}$ documentation to make ((the)) \underline{a} determination of eligibility.
- $((\frac{1}{1}))$ (2) If DDA has received all requested documentation and ((it is sufficient to)) can establish eliqibility, DDA will ((make a determination of eligibility and send you written notice of eligibility)) provide written and verbal notice.
- (((2))) <u>(3)</u> If DDA ((has received all requested documentation but it is insufficient to establish eligibility, DDA will make a determination of ineligibility and send you written notice of denial of eligibility)) cannot establish eligibility, DDA will send written and verbal notice of the reason for the ineligible decision.

 $((\frac{3}{3}))$ (4) If DDA has insufficient information to determine you eligible and has not received all of the requested documentation, DDA may deny ((your)) eligibility after ((ninety)) 90 days from the date of application. Rules governing reapplying for eligibility are in WAC 388-823-1080.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-0100 What is the effective date of my eligibility determination? (((1) If DDA receives sufficient information to substantiate your DDA eligibility, the)) The effective date of your DDA eligibility ((as a DDA client)) is the date ((of receipt of)) DDA receives the final piece of documentation needed to make an eligibility determination.
- (((2) DDA services cannot begin before the effective date of your DDA eligibility.))

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-0105 How will DDA notify me of the results of my eligibility determination? (1) DDA will ((send you)) provide written and verbal notification of the ((final)) determination ((of your eligibility per WAC 388-825-100)).
- (((1) If you are not eligible, the written notice will explain why you are not eligible, explain your appeal rights to this decision, and provide you with an administrative hearing request form.))
- (2) If you are <u>determined</u> eligible, the written ((notice)) notification will include:
 - (a) Your ((eligibility)) eligible condition(s);
 - (b) The effective date of your eligibility;
- (c) The expiration date or review date of your eligibility, if applicable; and
 - (d) The name and phone number of your DDA primary contact.
- (3) If you are determined not eligible, the written notification will:
 - (a) Explain the decision;
 - (b) Explain your appeal rights to the decision; and
 - (c) Provide you with an administrative hearing request form.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0115 If I am ((eligible to be a client of)) enrolled with DDA, will I receive DDA services? If ((DDA determines that you are eligible to be a client of)) enrolled with DDA, your access to services ((as a DDA client)) depends on ((your)) meeting eligibility requirements for the ((specific)) service. ((DDA paid services are described in WAC 388-825-057.)) Your eligibility for services is determined separately from your DDA enrollment.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-0200 How do I show that I have intellectual disability as an eligible condition? ((In order to be considered for eligibility under the condition of intellectual disability you must be age four or older and have a diagnosis of mental retardation as specified in the DSM-IV-TR or intellectual disability as specified in the DSM-5. This diagnosis must meet the following criteria:
- (1) The diagnosis must be made by a licensed psychologist, or be a finding of intellectual disability by a Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.
- (2) An acceptable diagnostic report includes documentation of all three diagnostic criteria specified in the DSM-IV-TR or DSM-5.))
- To be considered eligible with intellectual disability, you must have a diagnosis of intellectual disability or an equivalent diagnosis. This diagnosis must meet the following criteria:
 - (1) The condition must have onset before age 18;
- (2) The diagnosis must be made by a licensed psychologist, a Washington certified school psychologist, or other school psychologist certified by the National Association of School Psychologists; and
- (3) The diagnosis must be documented in an acceptable diagnostic report.

AMENDATORY SECTION (Amending WSR 15-01-021, filed 12/5/14, effective 1/5/15)

- WAC 388-823-0210 If I have intellectual disability, how do I meet the definition of substantial limitations? ((If you have an eligible condition of intellectual disability, in order to meet the definition of substantial limitations you must have:
- (1) Documentation of a full-scale intelligence quotient (FSIQ) score of more than two standard deviations below the mean per WAC 388-823-0720, and subject to all of WAC 388-823-0720 and 388-823-0730, and
- (2) Documentation)) To meet the definition of substantial limitations for intellectual disability, you must have documentation of an adaptive skills test score of more than two standard deviations below the mean ((as described)) in accordance with ((WAC 388-823-0740 and subject to all of)) WAC 388-823-0740 and 388-823-0750.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0300 How do I show that I have cerebral palsy as an eligible condition? ((In order to)) To be considered ((for eligibility under the condition of)) eliqible with cerebral palsy, you must ((be age four or older and)) have a diagnosis ((by a licensed physician)) of cerebral palsy or similar ((brain)) cerebral damage which causes((, quadriplegia, hemiplegia, or diplegia)) full or partial limb paralysis, with evidence of onset ((prior to)) before age ((three)) 18.

- (2) DDA accepts a diagnosis from:
- (a) A licensed physician;
- (b) A licensed naturopathic physician; or
- (c) A physician assistant or advanced registered nurse practitioner (ARNP) associated with a neurological practice.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0310 If I have cerebral palsy, how do I meet the definition of substantial limitations? ((If you have an eligible condition of cerebral palsy, in order to)) To meet the definition of substantial limitations for cerebral palsy, you must demonstrate the need for direct physical assistance, ((per)) as defined in WAC 388-823-0760, with two or more of the following activities as a result of your condition:

- (1) Toileting;
- (2) Bathing;
- (3) Eating;
- (4) Dressing;
- (5) Mobility; or
- (6) Communication.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0400 How do I show that I have epilepsy as an eligible condition? ((In order to)) To be ((considered for eligibility under the condition of)) eligible with epilepsy, you must ((be age four or older and)) have a diagnosis of epilepsy or a neurological condition that produces seizures.

- (1) You must show evidence that your epilepsy or seizure disorder originated ((prior to)) before age ((eighteen)) 18 and is expected to continue indefinitely.
- (2) The diagnosis must be made by a ((board certified)) <u>licensed</u> neurologist ((and be supported with documentation of medical history with neurological testing)).
- (3) You must provide confirmation from ((your)) <u>a</u> physician or neurologist that your seizures are ((currently uncontrolled and ongoing or recurring and cannot be controlled by medication)) ongoing despite medical intervention.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0410 If I have epilepsy, how do I meet the definition of substantial limitations? ((If you have an eligible condition of epilepsy, in order to)) To meet the definition of substantial limitations for epilepsy, you must have documentation of an adaptive skills test score ((that reflects your daily functioning)) of more than two standard deviations below the mean ((as described in WAC

388-823-0740 and subject to all of)) in accordance with WAC 388-823-0740 and 388-823-0750.

AMENDATORY SECTION (Amending WSR 22-01-037, filed 12/6/21, effective 1/6/22)

WAC 388-823-0500 How do I show that I have autism as an eligible condition? (1) To be considered ((for eligibility under the condition of)) eliqible with autism:

- (a) ((You must be age four or older;
- (b))) You must ((have been)) be diagnosed with:
- (i) Autism spectrum disorder ((299.00 under the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5)); or
- (ii) Autistic disorder ((299.00 under the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR))) before February 1, 2022;
 - (b) The condition must have originated before age 18; and
 - (c) You must have been diagnosed by:

 - (i) A ((board-certified)) <u>licensed</u> neurologist;(ii) A ((board-certified)) <u>licensed</u> psychiatrist;
 - (iii) A licensed psychologist;
 - (iv) A licensed developmental and behavioral pediatrician;
 - (v) A center of excellence as defined in WAC 182-531A-0200; or
- (vi) ((An advanced registered nurse practitioner (ARNP))) One of the following professionals associated with an autism center $((\tau))$ or developmental center((, or center of excellence;)):
- $(\overline{((v))})$ (A) A licensed physician; ((associated with an autism center, developmental center, or center of excellence; or
 - (vi) A board certified developmental and behavioral pediatrician.
 - (d) The condition must be expected to continue indefinitely; and
 - (e) You must provide evidence of onset before age five.))
 - (B) An ARNP;
 - (C) A physician assistant; or
 - (D) A naturopathic physician.
- (2) ((An acceptable diagnostic report includes documentation of diagnostic criteria specified in:
 - (a) The DSM-5; or
- (b) DSM-IV-TR for a diagnostic report dated before February 1, 2022.)) The diagnosis must be documented in a diagnostic report.

AMENDATORY SECTION (Amending WSR 22-12-055, filed 5/26/22, effective 6/26/22)

WAC 388-823-0510 What constitutes substantial limitation due to **autism?** $((\frac{1}{1}))$ To establish substantial limitation due to autistic disorder ((diagnosed under the DSM-IV-TR)) or autism spectrum disorder, you must have an adaptive skills test score more than two standard deviations below the mean ((as described in WAC 388-823-0740 and subject to all of)) in accordance with WAC 388-823-0740 and ((WAC)) 388-823-0750.

(((2) To establish substantial limitation due to autism spectrum disorder diagnosed under the DSM-5 you must:

- (a) Have an adaptive-skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to WAC 388-823-0740 and WAC 388-823-0750; and
 - (b) Have either:
- (i) A full-scale intellectual quotient (FSIQ) score more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to WAC 388-823-0720 and WAC 388-823-0730; or
- (ii) A written statement from a qualified professional that your autism prevents you from completing FSIQ testing. "Qualified professional" means:
 - (A) Board-certified neurologist;
 - (B) Board-certified psychiatrist;
 - (C) Licensed psychologist;
- (D) Licensed physician associated with an autism center, developmental center, or center of excellence;
 - (E) Board-certified developmental and behavioral pediatrician; or
- (F) Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.))

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

- WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability? (1) ((In order to)) To be considered for eligibility ((under the category of)) with another neurological or other condition similar to intellectual disability you must:
- (((1) Be age four or older and have)) (a) Have a diagnosis ((by a licensed physician)) of a neurological or chromosomal disorder that: $((\frac{a}{a}))$ (i) Originated before age 18;
- (((b))) <u>(ii)</u> Is known by reputable authorities to cause intellectual and adaptive ((skills)) skill deficits;
- (((c))) (iii) Is expected to continue indefinitely without improvement;
- $((\frac{d}{d}))$ (iv) Is other than intellectual disability, autism, cerebral palsy, or epilepsy; and
- $((\frac{(e)}{(v)}))$ Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; ((and
 - (f) Has resulted in substantial functional limitations.)) or
- $((\frac{2}{2}))$ Be receiving fee-for-service medically intensive children program (MICP) services under ((chapter 182-551)) WAC 182-551-3000, and have been continuously eligible for DDA due solely to your MICP eligibility since before August 13, 2018((; or
- (3) Be under the age of 20 and have one or more developmental de-lays)).
 - (2) You must have been diagnosed by:
 - (a) A licensed physician;
 - (b) A licensed naturopathic physician;
 - (c) Geneticist; or
- (d) One of the following professionals associated with a neurological clinic or genetic testing center:
 - (i) An ARNP; or
 - (ii) A physician assistant.

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

- WAC 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations? (1) If you have an eligible condition of another neurological or other condition similar to intellectual disability, ((in order)) to meet the definition of substantial functional limitations you must have ((impairments in both intellectual abilities and adaptive skills, which are separate from any impairment due to an unrelated mental illness, or emotional, social, or behavioral disorder.))
- (1) For a neurological or chromosomal disorder, evidence of substantial functional limitations requires documentation of (a) and (b) below:
- (a) For impairment in intellectual abilities, either subsection (i) or (ii) or (iii) of this section:
- (i) An FSIQ score of more than 1.5 standard deviations below the mean under WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730;
- (ii) If you are under the age of 20, significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or
- (iii) A written statement from a licensed physician, a licensed psychologist, or a school psychologist that your condition prevents you from completing FSIQ testing.
- (b) For impairment in)) an adaptive skills test((7-a)) score of more than two standard deviations below the mean ((under WAC 388-823-0740 and subject to all of)) in accordance with WAC 388-823-0740 and WAC 388-823-0750.
- (2) For ((the medically intensive children's program,)) WAC 388-823-0600(2) you do not need additional evidence of your substantial functional limitations if your eligible condition is solely due to your eligibility and participation in the fee-for-service medically intensive children program under chapter 182-551 WAC.
- (((3) For developmental delays, evidence of substantial functional limitations requires documentation of (a) or (b) or (c) below:
- (a) You are under the age of three and have one or more developmental delays under WAC 388-823-0770;
- (b) You are under the age of three and meet the ESIT eligibility requirements; or
- (c) You are under the age of 20 and have three or more developmental delays under WAC 388-823-0770.))

DEVELOPMENTAL DELAY

NEW SECTION

- WAC 388-823-0620 How do I show that I have a developmental delay as an eligible condition? To be eligible with developmental delay, you must be:
- (1) Under the age of three and have one or more developmental delays;
- (2) Under the age of three and meet the ESIT eligibility requirements; or
- (3) Under the age of 20 and have three or more developmental de-

NEW SECTION

- WAC 388-823-0630 What evidence do I need of developmental delays? (1) To qualify under developmental delay, DDA must receive evidence showing a standard deviation of at least 1.5 or 25% or more of the chronological age in at least one of the following developmental areas:
 - (a) Fine or gross motor skills;
 - (b) Self-help/adaptive skills;
- (c) Expressive or receptive communication, including American Sign Language;
 - (d) Social/emotional skills; and
 - (e) Cognitive, academic, or problem-solving skills.
 - (2) The evidence of developmental delay must be:
 - (a) Measured using an age-appropriate diagnostic assessment; and
- (b) Assessed within the past 18 months, except when written confirmation explains the previously measured delay remains valid.
- (3) DDA accepts a written statement from a qualified professional stating that your developmental delay prevents you from completing testing.
- (4) The assessment must be completed by one of the following professionals qualified to assess the developmental areas outlined above:
 - (a) Licensed physician or physician assistant;
 - (b) Licensed naturopathic physician;
 - (c) Licensed psychologist or certified school psychologist;
 - (d) Speech language pathologist;
 - (e) Audiologist;
 - (f) Licensed occupational therapist;
 - (g) Licensed physical therapist;
 - (h) ARNP or registered nurse;
 - (i) Certified teacher;
 - (j) Master's level social worker; or
 - (k) Orientation and mobility specialist.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0740 What evidence do I need of my adaptive skills limitations? (1) ((Evidence of substantial limitations of adaptive functioning requires a qualifying score completed in the past thirtysix months on one of the tests shown in the table below:)) For evidence of adaptive skills limitations, DDA accepts a qualifying score from one of the following assessments completed in the past 36 months.

Assessment	Qualifying Score
Vineland adaptive behavior scales (VABS)	An adaptive behavior composite score of 69 or less
Scales of independent behavior - Revised (SIB- R)	A broad independence standard score of 69 or less
Adaptive behavior assessment system ((- Second edition (ABAD- H))) (ABAS)	An adaptive behavior composite score of 69 or less
Inventory for client and agency planning (ICAP)	A broad independence standard score of 69 or less
Diagnostic adaptive behavior scale (DABS)	A broad total adaptive score of 69 or less

- (a) ((Tests)) Assessments must be administered and scored by professionals who have a background in individual assessment, human development and behavior, ((and)) tests and measurements, ((as well as an understanding)) and knowledge of individuals with disabilities.
- (b) ((Tests must be administered following the instructions for the specific test used.)) DDA will administer or arrange for the administration of the ICAP only if results from one of the other acceptable tests are not available within the past 36 months.
- (c) ((Department)) Authorized administration staff or ((designee contracted with DDA)) contracted designee must administer the ICAP.
- ((d) DDA will administer or arrange for the administration of the ICAP only if results from one of the other acceptable tests are not available.))
 - (2) The adaptive test score cannot be a result of:
- ((an)) (a) An unrelated mental illness or other psychiatric condition occurring at any age; or
- ((other)) (b) Another illness or injury occurring after age ((eighteen)) 18.
- $((\frac{a}{a}))$ If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your adaptive functioning ((impairment)), measured by an adaptive skills test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.
- (((b))) <u>(a)</u> "Acceptable documentation" means written reports or statements that are directly related to ((the subject at issue)) adaptive functioning, reasonable ((in light of all)) considering the evidence, and from a ((source of appropriate authority)) qualified professional. The determination of whether a document is acceptable is made by DDA.
- (((c))) (b) If no documentation is provided or DDA determines that the documentation is not acceptable DDA ((will)) may deny eligibility. The determination ((may)) can be challenged through an administrative appeal.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0750 If I have more than one adaptive test score, what criteria will DDA use to select the adaptive test for determining eligibility? If you have more than one adaptive test score ((during the thirty-six)) from the 36 months ((prior to your)) before an eligibility determination, DDA will accept the most recent assessment that ((test score obtained closest to the date of review or application providing it is a valid score and)) reflects adaptive functioning due to your developmental disability.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0760 ((What evidence)) $\underline{\text{How}}$ do I ((need to)) show my need for direct physical assistance? (1) (($\underline{\text{The}}$)) $\underline{\text{To show your}}$ need for direct physical assistance, your impaired motor control must require ((with)) direct physical assistance to complete activities of daily living ((is due to your impaired motor control and means)) resulting in:

- (a) ((You)) The need ((the presence and)) for physical assistance ((of another person on a daily basis to be able)) to communicate ((and be understood by any other)) with another person on a daily basis.
- (i) ((If you are able to communicate through)) Effective use of a communication device ((you will be)) is considered independent ((in))communication.
- (ii) ((You must require more)) More than (("setting up" of the)) communication device set up is required.
- (b) ((You)) The need for direct physical assistance ((from another person on a daily basis)) with toileting, bathing, eating, dressing, or mobility on a daily basis.
- (i) ((You require more)) "Direct physical assistance" means more than (("setting up" the)) task set up ((to enable you to perform the task independently)) and support to physically transfer to the task are required.
- (ii) ((You must require direct physical assistance for more than transferring in and out of wheelchair, in and out of the bath or shower, and/or on and off of the toilet.
- (iii) Your ability to be mobile is your ability to move yourself from place to place, not your ability to walk. For instance, if you can transfer in and out of a wheelchair and are independently mobile in a wheelchair, you do not meet the requirement for direct physical assistance with mobility)) "Mobility" means the ability to move from place to place independently regardless of the use of mobility aides.
- (2) Any of the following can be used as documentation of ((your)) direct physical assistance needs:
- (a) The comprehensive assessment reporting evaluation (CARE) tool or other department assessments that measure direct assistance needs in the areas specified above;
- (b) Assessments and reports from educational or healthcare professionals that ((are current and consistent with your current functioning)) describe direct assistance needs;
- (c) In the absence of professional reports or assessments, DDA may document its own observation of ((your)) direct assistance needs

((along with reported)) and information reported by ((family and others)) people familiar with you.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0910 What is the purpose of ICAP? The ((purpose of the)) ICAP ((is to assess your)) assesses adaptive skills in the areas of motor ((skills)), personal living ((skills)), social_ ((and)) communication ((skills)), and community living ((skills)).

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-0920 What sections of the ICAP does DDA or a contracted designee ((contracted with DDA)) complete and score? (1) DDA ((or a designee contracted with DDA)) completes the adaptive behavior portion of the ICAP.
- (2) There is ((a computer generated)) an age-based broad independence score of your adaptive skills in the areas of motor ((skills)), personal living ((skills)), social, ((and)) communication ((skills)), and community living ((skills, based on your age)).

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-0930 How does DDA ((or a designee contracted with DDA)) administer the ICAP? (1) DDA or a contracted designee ((contracted with DDA)) completes the adaptive section of the ICAP by interviewing a qualified respondent who has ((known you for at least three months and who sees you on a day-to-day basis. You cannot be the respondent for your own ICAP)) an established relationship with you. The qualified respondent must be someone who has interacted with you on a regular basis for at least three months.
- (2) DDA or a <u>contracted</u> designee ((contracted with DDA)) will choose the respondent and may interview more than one respondent to ensure that information is complete and accurate.
- (3) DDA or a contracted designee ((contracted with DDA)) will ask ((you to demonstrate some of the)) for a skills ((in order)) demonstration to evaluate ((what skills you are able to perform)) current functioning. ((DDA or a designee contracted with DDA cannot administer the ICAP if no respondent is identified and available.))
 - (4) DDA cannot administer the ICAP when:
- (a) There is no respondent identified and available. You cannot be the respondent for your own ICAP.
- (b) There is a previous, valid ICAP or adaptive skills test score from the past 36 months.

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

- WAC 388-823-1005 When does my eligibility as a DDA client expire? (1) ((If you are determined eligible before age three, your eligibility expires on your fourth birthday.
- (2) If you are determined eligible with developmental delays after your third birthday, your eligibility expires on your 20th birthday.
- (3) DDA will notify you at least six months before your eligibility expiration date.
- (4) If your eligibility expires, you must reapply in order to maintain eligibility with DDA.
- (5) If DDA receives your reapplication less than 60 days before your expiration date and does not have sufficient time to make an eliqibility determination by the date of expiration, your DDA eliqibility will expire and your DDA paid services will stop.
- (a) If DDA determines you are eligible after your eligibility expires, your eligibility will be reinstated on the date that DDA determines vou eligible under WAC 388-823-0100.
- (b) If DDA determines you are eligible after your eligibility expires, your eligibility will not be retroactive to the expiration date.
- (6) This expiration of eligibility takes effect if DDA is unable to locate you to provide written notification that eligibility is expiring.
- (7) There is no appeal right to eligibility expiration.)) If you are enrolled before your third birthday with developmental delay(s), your eligibility expires on your fourth birthday.
- (2) If you are enrolled with developmental delays on or after your third birthday, your eligibility expires on your 20th birthday.
- (3) DDA will notify you in writing at least six months before your eligibility expiration date.
- (4) If your eligibility expires, you must reapply to stay enrolled with DDA.
- (5) DDA eligibility will expire and DDA paid services will stop if DDA receives your reapplication less than 60 days before the expiration date and does not have sufficient time to make a determination.
- (6) Eligibility will be reinstated if DDA determines you are eligible after an expiration date. You are reenrolled on the date a new <u>determination is made.</u>
- (7) Eliqibility will expire if DDA is unable to locate you to provide written notice of expiration.
 - (8) There is no appeal right to eligibility expiration.

AMENDATORY SECTION (Amending WSR 24-01-119, filed 12/19/23, effective 1/19/24)

- WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA? While DDA may review your eligibility at any time, DDA will review your eligibility:
 - (a) ((If you are)) <u>At</u> age 19 ((and:
- (i) Your)) when the most recent eligibility determination was completed before ((your 16th birthday; and)) age 16.

- (((ii) You are eligible with intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition similar to intellectual disability.))
- (b) ((If you are)) At age 19 ((and are)) when determined eligible with another neurological or other condition similar to intellectual disability and ((have used)) academic delays were used as evidence of ((your)) substantial functional limitations.
- (c) Before authorization of any DDA-paid service if ((you are)) one is not currently receiving paid services and ((your)) the most ((current)) recent eligibility determination was ((made)) before June 1, 2005.
- (d) If the evidence used to make the most recent eligibility determination is insufficient, contains an error, or appears fraudulent.
- (e) If new information becomes available that does not support ((your)) the current eligibility determination.
- $((\frac{(e)}{(e)}))$ (f) If you $(\frac{(were)}{(e)})$ are determined eliqible due solely to ((your eligibility for)) enrollment in the fee-for-service (FFS) medically intensive children's program (MICP) ((services and you are)) but you are no longer eligible for FFS MICP services.
- (2) DDA will notify you in writing at least six months before your eligibility review date.
- ((If DDA does not receive all of the documentation necessary to determine you are eligible during)) (3) When a review((, DDA will terminate your)) occurs and there is insufficient information to determine your eligibility, DDA can disenroll you:
- (a) On your 20th birthday if ((the review is because you are)) it is an age 19 review; or
- (b) 90 days after ((DDA requests)) the information is requested, if the review is because:
 - (i) ((You have requested a)) A paid service is requested;
- (ii) The evidence used to make the most recent eligibility determination is insufficient, contains an error, or appears fraudulent;
- (iii) New information is available that does not support ((your)) the current eligibility determination; or
- (((iii))) <u>(iv)</u> You are no longer eligible for FFS MICP services under chapter 182-551 WAC.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1060 How ((will)) does DDA notify me of its decision? DDA will notify you and your legal representative or ((one)) other responsible ((party)) parties - verbally and in writing - of ((its)) <u>a</u> determination of eligibility, ineligibility, or expiration of eligibility per WAC 388-825-100.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1070 What are my appeal rights ((to a department decision that I am not eligible to be a client of)) if found DDA ineligible? ((Your appeal rights to a department decision that you are not eligible to be a DDA client because you do not meet the requirements

for a developmental disability as outlined in chapter 388-823 WAC)) If found DDA ineligible due to not meeting requirements under this chapter, your appeal rights are limited to those described in WAC 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

- WAC 388-823-1080 If found DDA ((decides that I do not meet the requirements for eligibility)) ineligible, can I reapply ((for another decision))? If DDA decides that you do not meet the requirements for eligibility, ((as defined in this chapter,)) DDA will ((only)) accept a new application if:
- (1) ((Your eligibility)) Eligibility was terminated because DDA could not locate you and you have ((subsequently)) since contacted DDA;
- (2) ((Your eligibility)) Eligibility was terminated because you ((lost residency in the state of)) were not a Washington ((and you)) state resident but have since reestablished residency;
- (3) DDA eligibility requirements have changed since your most recent eligibility determination;
- (4) ((You have)) There is additional or new diagnostic or relevant testing information ((relevant to the determination)) that DDA did not previously review ((for the previous determination of eligibility)). DDA will accept an adaptive skills test result as new information if it reflects adaptive functioning due to your developmental disability.
- (((a) The only acceptable new information considered is diagnostic information, FSIO tests, or adaptive skills tests.
- (b) DDA will only accept adaptive skills tests as new information if you provide evidence that your prior scores were invalid or if you provide evidence of a loss of functioning related to your qualifying condition.
- (c) DDA will not administer an ICAP if you have a previous, valid ICAP or adaptive skills test score that is current within the past thirty-six months.))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-823-0720	What evidence do I need of my FSIQ?
WAC 388-823-0730	If I have more than one FSIQ score, what criteria will DDA use to select the FSIQ for determining eligibility?
WAC 388-823-0770	What evidence do I need of developmental delays?
WAC 388-823-0940	What happens if DDA or a designee contracted with DDA cannot identify a qualified respondent?

Washington State Register, Issue 24-19 WSR 24-18-040

WAC 388-823-1000	Once I become an eligible DDA client, is there a time limit to my eligibility?
WAC 388-823-1030	How will I know that my eligibility is expiring or is due for review?
WAC 388-823-1090	If I am already eligible, how do these new rules affect me?
WAC 388-823-1100	How do I complain to DDA about my services or treatment?

Washington State Register, Issue 24-19 WSR 24-19-012

WSR 24-19-012 PERMANENT RULES

FOREST PRACTICES BOARD

[Filed September 5, 2024, 2:40 p.m., effective October 6, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To amend the forestry riparian easement program rules to implement SSB 5667 related to eligibility, enrollment, and compensation of small forest landowners volunteering for participation in the program.

Citation of Rules Affected by this Order: Amending WAC 222-21-005, 222-21-010, 222-21-030, 222-21-045, 222-21-050, and 222-21-080.

Statutory Authority for Adoption: RCW 76.09.040.

Adopted under notice filed as WSR 24-11-124 on May 21, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0. Date Adopted: August 14, 2024.

> Lenny Young Chair

OTS-5438.1

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-005 Policy. The legislature has found that further reduction in harvestable timber owned by small forest landowners as a result of the rules adopted under RCW 76.09.055 or 76.09.370 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature addressed these concerns by establishing a forestry riparian easement program to acquire easements from qualifying small forest landowners along riparian and other areas of value to the state for protection of aquatic resources. At least semiannually, the department shall consult with the small forest landowner advisory committee established in RCW 76.13.110(4) to review landowner complaints, administrative processes, rule recommendations, and related issues where the department is actively seeking the small forest landowner advisory committee's advice on potential improved efficiencies and effectiveness.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

- WAC 222-21-010 Definitions. The following definitions apply to this chapter:
- (1) "Completion of harvest" means that the trees ((within the)) from an area under an approved forest practices application have been commercially harvested and further entry into that area by any type of logging or slash treating equipment or method is not expected.
- (2) "Easement premises" means the geographic area designated in a forestry riparian easement including areas in which qualifying timber is located.
- (3) "Forestry riparian easement" means a conservation easement covering qualifying timber granted voluntarily to the state by a qualifying small forest landowner.
- (4) "Forests and fish rules" means the rules adopted by the board in accordance with RCW 76.09.055, 76.09.370, and the amendments to those rules.
- (5) "Hazardous substances" includes, but is not limited to, hazardous substances as defined in RCW ((70.102.010 and 70.105D.020))70A.415.010 and 70A.305.010, and solid waste as defined in RCW ((70.95.030)) 70A.205.015.
- (6) "Qualifying small forest landowner" means an owner of forest land with qualifying timber meeting all of the criteria in (a)(i) through (iv) of this subsection as of the date the department receives a forest practices application associated with a proposed forestry riparian easement, and the date the department offers compensation for the easement.
 - (a) A qualifying small forest landowner:
- (i) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still be a qualifying small forest landowner under this chapter;
- (ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least ((fifty)) 40 years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office;
- (iii) Has no outstanding violations of chapters 76.09 or 76.13 RCW or any associated forest practices rules;
- (iv) Has harvested or expects to harvest from his or her forest lands in this state as follows:
- (A) No more than the average volume that would qualify the landowner as a "small harvester" under RCW 84.33.035 during the three years prior to the year the department receives a complete forest practices application associated with the easement, and certifies that he or she does not expect to exceed that average timber volume during the ((ten)) $\underline{10}$ years following the date of the offer of compensation for the easement; or
- (B) If the landowner can establish to the satisfaction of the small forest landowner office that those harvest limits were or will be exceeded to raise funds to pay estate taxes or other equally compelling and unexpected obligations such as court-ordered judgments or extraordinary expenses, the landowner may still be a qualifying small forest landowner.
- (b) To be eligible for a forestry riparian easement, a qualifying small forest landowner must have submitted a forest practices applica-

tion covering qualifying timber to the appropriate region office, and the department must have approved the application or disapproved it because of forests and fish rule restrictions. See WAC 222-21-032 for more information about easement eligibility.

- (7) "Qualifying timber" means forest trees on land owned by a qualifying small forestland owner for which the small forestland owner is willing to grant the state a forestry riparian easement and that meet criteria (a) through (c) of this subsection:
 - (a) Are covered by a forest practices application.
 - (b) Fit one of the following situations:
- (i) The timber is required to be left unharvested because of forests and fish rule restrictions and is within, immediately adjacent to, or physically connected to a commercially reasonable harvest unit under an approved forest practices application; or
- (ii) The timber cannot be approved for harvest under a forest practices application because of forests and fish rule restrictions.
 - (c) Are located within one or more of the following areas:
 - (i) Riparian or other sensitive aquatic areas;
 - (ii) Channel migration zones; or
- (iii) Areas of potentially unstable slopes or landforms, verified by the department, that have the potential to deliver sediment or debris to a public resource or threaten public safety and are immediately adjacent to or physically connected to other qualifying timber that is located within riparian or other sensitive aquatic areas.

Qualifying timber may also mean forest trees that do not meet criteria (b) or (c) of this subsection if they are uneconomic to harvest as determined under WAC 222-21-032(6).

(8) "Small forest landowner office" means an office within the department of natural resources. The office is a resource and focal point for small forest landowner concerns and policies, and has expertise regarding the management of small forest holdings and government programs applicable to such holdings. The office manages the forestry riparian easement program.

AMENDATORY SECTION (Amending WSR 21-06-020, filed 2/22/21, effective 3/25/21)

- WAC 222-21-030 Documentation and standards. (1) Forest practices application. Prior to submitting a forestry riparian easement application, the landowner must have an approved forest practices application or an application that was disapproved because of forests and fish rule restrictions.
- (2) Forestry riparian easement application. The landowner will provide the following information in a forestry riparian easement application:
- (a) County tax parcel numbers of the property in the proposed easement premises;
- (b) A list of all forest practices application numbers of approved and/or disapproved forest practices applications;
 - (c) <u>Date of completed harvest;</u>
- (d) The landowner's signature certifying that the landowner meets the criteria of a qualifying small forest landowner and documenting that the landowner is willing to sell or donate such easements to the state; and

 $((\frac{d}{d}))$ (e) Documentation that qualifying timber within or immediately adjacent to, or physically connected to a commercially reasonable harvest area, cannot be harvested because of forests and fish rule restrictions, or is uneconomic to harvest because of forests and fish rule restrictions. See WAC 222-21-032 for additional information about these eligibility criteria.

The small forest landowner office may require additional information from the applicant to process the application and evaluate the eligibility of the proposed easement premises and the landowner.

- (3) Baseline documentation. The small forest landowner office will gather baseline documentation that will describe the features and current uses on the proposed forestry riparian easement premises and the qualifying timber. The documentation will include but not be limited to:
- (a) A summary of cruise information consistent with the standards and methods in WAC 222-21-040; and
- (b) An assessment to determine site condition and potential liabilities associated with the proposed riparian easement premises.
- (4) Forestry riparian easement contract. The forestry riparian easement contract will identify the parties, describe the land, locate the easement, state the terms and conditions, and provide a statement of consideration. The contract will include language consistent with RCW 76.13.120(((5)))) (6) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of ((fifty)) 40 years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office.
 - (5) Land description standards.
- (a) The forestry riparian easement contract will include a description of the easement premises using a land survey provided by the department unless the cost of securing the survey would be unreasonable in relation to the value of the easement conveyed.
- (b) When the small forest landowner office determines a land survey is not required, the department will prepare a written description that suitably and accurately depicts the location of the easement conveyed, or the department may consider other methods, such as producing a map, to accurately describe the easement premises.

AMENDATORY SECTION (Amending WSR 21-06-020, filed 2/22/21, effective 3/25/21)

WAC 222-21-045 Valuation. (1) The small forest landowner office will calculate the compensation amount for forestry riparian easements by determining a stumpage value for the qualifying timber. The office will use data gathered from ((or adjusted to)) the date ((the office received the complete forestry riparian easement application)) of the completed harvest. For applications that are eligible under WAC 222-21-032 without an associated harvest completion date, the office will use the date the completed forest riparian easement application is received. The office will use the stumpage value determination method described in (a) of this subsection ((for)) to calculate the stumpage value of the qualifying timber ((that cannot be harvested because of forests and fish rule restrictions. For qualifying timber approved for harvest, the office will use both the stumpage value determination method and the small harvester tax return method to)). The

office will also calculate the stumpage value of the qualifying timber as described in (b) of this subsection if the landowner voluntarily provides harvest records. The office will determine the highest compensation amount for the landowner.

- (a) Stumpage value determination method. The small forest landowner office will create and maintain value tables to determine stumpage value of the qualifying timber. These tables will be created using a method coordinated with the department of revenue. The values will closely approximate the stumpage value for logs on the date ((the office received a complete forestry riparian easement application)) of the completed harvest. The landowner will provide:
- (i) The reference for the stumpage value table and any other needed information for use of the table; and
- (ii) Any information the landowner would like the office to consider in its cruise and valuation of the qualifying timber.
 - (b) Small harvester tax return method.
- (i) The landowner must provide comprehensive mill or buyer information for each harvest unit associated with the forestry riparian easement including:
 - (A) The delivered value by species;
 - (B) The total volume by species; and
- (C) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.

This information must be verifiable as proceeds from the timber harvests from documents such as mill receipts and/or forest excise tax returns. If the small forest landowner office does not receive a comprehensive packet of mill or buyer information or is not satisfied with the source of the documentation, the office will determine the qualifying timber value using the stumpage value determination method.

(ii) ((The office will use a time adjustment index to determine the qualifying timber value based on the date the office received the complete forestry riparian easement application. The office will generate a time adjustment index for each harvest associated with the easement based on log price changes.

(iii))) The office will determine the ((adjusted)) stumpage value by subtracting the average logging and hauling cost per thousand board feet (MBF) from the value of the ((time adjusted)) mill or buyer information. The office will then determine the value of the qualifying timber by multiplying the ((time adjusted)) stumpage value of each species in the harvest unit by the net volume for each corresponding species in the inventory of qualifying timber.

 $((\frac{(iv)}{iv}))$ (iii) The $(\frac{department}{iv})$ office determines the values of the timber species that exist in the easement premises, not the species in the harvest area. The ((department)) office determines the ((easement)) qualifying timber value by multiplying the determined cruise volume of qualified timber in the easement premises by the appropriate stumpage value of those species shown on the appropriate table used for timber harvest excise tax purposes per RCW 84.33.091 or the appropriate stumpage values of those species calculated by the office using the landowner's comprehensive mill or buyer information.

(2) Determining the forestry riparian easement compensation. ((The small forest landowner office uses a "high impact regulatory threshold" to calculate the compensation offered for a forestry riparian easement. This threshold is determined by multiplying the value of all timber covered under a forest practices application by 19.1 percent for timber in western Washington and 12.2 percent for timber in eastern Washington.

- (a) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application is equal to or less than the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be fifty percent of the qualifying timber value.
- (b) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application exceeds the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be more than fifty percent of the qualifying timber value up to the applicable high impact regulatory threshold, plus full compensation (one hundred percent) for the qualifying timber value that exceeds the high impact regulatory threshold. This is mathematically represented as follows:

Where:

Vq = the value of qualifying timber;

Vh = the value of harvested timber; and

t = the high impact of regulatory threshold (19.1 percent for western Washington, 12.2 percent for eastern Washington);

The compensation for easement = (((Vq/(Vq + Vh)) t) * (Vq + Vh)) + (t * (Vq + Vh)/2).)

The easement compensation will equal 90 percent of the qualifying timber value determined in subsection (1)(a) or (b) of this section.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12

- WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner. (1) All compensation and reimbursement to the small forest landowner is subject to available funding and to the extent reasonable possible the small forest landowner office will process forestry riparian easement applications in the order received.
- (2) If funding is not available, the small forest landowner office will maintain a priority list for compensation and reimbursement to the landowner. Priority will be based on the date the small forest landowner office received the complete forestry riparian easement application. In instances where two easement applications are received on the same date, priority will be based on the date the department received a complete forest practices application associated with the easement.
- (3) The small forest landowner office will offer compensation for the easement in a purchase and sale agreement. The small forest landowner will accept or reject the conditions of the purchase and sale agreement in writing and submit the written acceptance or rejection to the small forest landowner office.
- (4) Compensation for the forestry riparian easement and reimbursement of landowner costs will be paid after:
- (a) The department has verified that the landowner has no outstanding violations under chapters 76.09 or 76.13 RCW or any associated forest practices rules;
- (b) Any dispute over the amount of compensation or eligibility or other matter involving the easement has been resolved; and

- (c) The small forest landowner office has sent a forestry riparian easement contract to the landowner, the landowner has signed the contract, and the landowner has delivered it to the department.
- (5) Compensation for any qualifying timber located on potentially unstable slopes or landforms will not exceed a total of (($\frac{\text{fifty thou}}{\text{sand dollars}}$)) §150,000 during any biennial funding period.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-080 Eminent domain. If a forestry riparian easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, the state will receive compensation for its remaining interest in the easement based upon the following formula:

Where:

C = the compensation to the department for the state's remaining interest in the easement;

O = the original compensation for the easement paid to the small forest landowner by the state;

P = the proportion of the forestry riparian easement extinguished or terminated;

CPIo = the Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics for the month in which the original compensation was determined;

CPIc = the Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics for the most recent month available at the time the easement is terminated or extinguished;

I = the rate of return on 30 year treasury bonds, as reported by the Federal Reserve Statistical Release H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months;

R = the number of years remaining on the easement at the time of extinguishment or termination;

 $C = O*P*(CPIc/CPIo)*(1-(1/(1+I)^R))/(1-1/(1+I)^{50}).$

Washington State Register, Issue 24-19 WSR 24-19-037

WSR 24-19-037 PERMANENT RULES HEALTH CARE AUTHORITY

[Filed September 11, 2024, 9:42 a.m., effective November 1, 2024]

Effective Date of Rule: November 1, 2024.

Purpose: The health care authority is amending WAC 182-505-0100 and 182-509-0305 to increase the income standards for pregnancy and postpartum groups from 193 percent to 210 percent of the federal poverty level. This increase is consistent with RCW 74.09.830 and 74.09.839.

Citation of Rules Affected by this Order: Amending WAC 182-505-0100 and 182-509-0305.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160. Other Authority: RCW 74.09.830, 74.09.839.

Adopted under notice filed as WSR 24-16-113 on August 5, 2024. Number of Sections Adopted in Order to Comply with Federal Stat-

ute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0. Date Adopted: September 11, 2024.

> Wendy Barcus Rules Coordinator

OTS-5591.1

AMENDATORY SECTION (Amending WSR 22-11-004, filed 5/5/22, effective 6/5/22)

- WAC 182-505-0100 Monthly income standards for MAGI-based programs. (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at https://aspe.hhs.gov/topics/poverty-economic-mobility/povertyguidelines/prior-hhs-poverty-guidelines-federal-register-references.
- (a) The income standards for the following Washington apple health programs change on the first day of April every year based on the new FPL, except for subsections (2) and (3) of this section.
- (b) The agency determines income eligibility by comparing countable income ((as determined)) of the person's medical assistance unit (MAU), as determined under WAC 182-506-0010 and 182-506-0012, to the applicable income standard. Rules for determining countable income are in chapter 182-509 WAC.
- (2) Parents and caretaker relatives under WAC 182-505-0240 must have countable income equal to or below the following standards:

Medical Assistance Unit Size	1	2	3	4	5	6	7	8	9	10	11+
Income Standard	\$511	\$658	\$820	\$972	\$1,127	\$1,284	\$1,471	\$1,631	\$1,792	\$1,951	\$1,951

- (3) Parents and caretaker relatives with earned income above the limits in subsection (2) of this section are the only people who may be eligible for the transitional medical program described in WAC 182-523-0100.
- (4) Adults described in WAC 182-505-0250 who are not eligible under subsection (2) or (3) of this section must have countable income equal to or below ((one hundred thirty-three)) 133 percent of the FPL.
- (5) Pregnant people described in WAC 182-505-0115 must have countable income equal to or below ((one hundred ninety-three)) 210 percent of the FPL.
 - (6) Children with countable income:
- (a) Equal to or below (($\frac{\text{two hundred ten}}{\text{ten}}$)) 210 percent of the FPL as described in WAC 182-505-0210 ($(\frac{(3)}{(a)})$) receive coverage at no cost.
- (b) Greater than ((two hundred ten)) 210 percent but equal to or less than ((three hundred twelve)) 312 percent as described in WAC $182-505-0210 \ ((\frac{(3)(a)(ii)}{2}))$ receive premium-based coverage. Premium amounts are described in WAC 182-505-0225.

OTS-5592.1

AMENDATORY SECTION (Amending WSR 24-10-083, filed 4/30/24, effective 7/1/24)

- WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology. (1) Eligibility for Washington apple health for the following people is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300:
- (a) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below 54 percent of the federal poverty level (FPL) as described in WAC 182-505-0240.
- (b) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in (a) of this subsection but is at or below 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.
- (c) Adults with no eligible dependent child with net countable income at or below 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.
- (d) Pregnant people whose net countable income, based on a household size that includes any unborn children, is equal to or below ((193)) 210 percent FPL at the time of application, as described in WAC 182-505-0115.
- (e) People within the 12-month postpartum period beginning the month after the pregnancy ends whose net countable income is equal to

or below ((193)) 210 percent FPL at the time of application, as described in WAC 182-505-0115.

- (f) Children age 18 or younger in households with net countable income which is $\underline{\text{equal to or}}$ below 210 percent FPL, as described in WAC 182-505-0210 ((((3)(a)))).
- (g) Children age 18 or younger in households with net countable income that is ((between)) greater than 210 percent ((and)) but equal to or below 312 percent FPL, as described in WAC 182-505-0215. Children who are eliqible under this section are subject to premiums as described in WAC 182-505-0225.
- (h) People age 18 and older who have income over 150 percent FPL who are financially and functionally eligible to receive the community behavioral health support services (CBHS) benefit, as described in chapter 182-561 WAC.
- (2) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

Washington State Register, Issue 24-19

WSR 24-19-040 PERMANENT RULES LIQUOR AND CANNABIS BOARD

[Filed September 11, 2024, 10:30 a.m., effective October 12, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state liquor and cannabis board (board) has amended three existing sections of chapter 314-55 WAC (WAC 314-55-083, 314-55-087, and 314-55-089) and created one section of chapter 314-55 WAC (WAC 314-55-090) to implement SHB 1453 (chapter 79, Laws of 2024), codified at RCW 69.50.535(2).

The amendments to WAC 314-55-083 are to ensure that new record requirements align with traceability requirements.

The amendments to WAC 314-55-087 are to ensure that new record requirements for applying the excise tax exemption are incorporated into existing record requirements.

The amendments to WAC 314-55-089 are to ensure that the rule lanquage there is consistent with new record requirements at WAC 314-55-090, and to make some slight housekeeping changes.

WAC 314-55-090 is created to identify what records need to be preserved by retailers to demonstrate they are correctly applying the medical cannabis excise tax exemption as identified in RCW 69.50.535.

Citation of Rules Affected by this Order: New WAC 314-55-090; and amending WAC 314-55-083, 314-55-087, and 314-55-089.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, 69.50.535.

Adopted under notice filed as WSR 24-15-066 on July 17, 2024. Changes Other than Editing from Proposed to Adopted Version: Changes are described in the table below:

Section	Proposed Rule Language	Final Rule Language	Rule Necessity
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Requirements in this section comply with the confidentiality and exemption provisions for personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database as described in RCW 69.51A.230.	Responding to testimony received during public hearing held on August 28, 2024.
(6)	[N/A]	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Was previously at subsection 5.

A final cost-benefit analysis is available by contacting Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-480-1238, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0,

Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

David Postman Chair

OTS-5420.9

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-083 Security and traceability requirements for cannabis licensees. The security requirements for a cannabis licensee are as follows:

- (1) Display of identification badge. All licensees and employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises and engaged in the transportation of cannabis. The identification badge must list the licensee's trade name and include the person's full and legal name and photograph. All licensees and employees must have their state issued identification available to verify the information on their badge is correct.
- (a) All nonemployee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises.
- (b) A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit.
- (c) All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any ((\text{\text{WSLCB}})) LCB employee or law enforcement officer, and must be copied and provided to the ((WSLCB)) LCB or law enforcement officer upon request.
- (d) Employees, visitors, and other persons at a cannabis licensed premises, including persons engaged in the transportation of cannabis, must provide identification to a ((\widensity \text{SLCB})) \text{LCB} enforcement officer upon request.
- (2) Alarm systems. At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and holdup alarms may also be used.
- (3) Surveillance system. At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement must allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility must be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously 24 hours per day and at a minimum of 10 frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another

manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of 45 days on the licensee's recording device. All videos are subject to inspection by any ((WSLCB)) LCB employee or law enforcement officer, and must be copied and provided to the ((WSLCB)) LCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards. Controlled areas include:

- (a) Any area within an indoor, greenhouse or outdoor room or area where cannabis is grown, or cannabis or cannabis waste is being moved within, processed, stored, or destroyed. Rooms or areas where cannabis or cannabis waste is never present are not considered control areas and do not require camera coverage.
 - (b) All point-of-sale (POS) areas.
- (c) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.
- (d) Any room or area storing a surveillance system storage device.
- (4) Traceability: To prevent diversion and to promote public safety, cannabis licensees must track cannabis from seed to sale. Licensees must provide the required information on a system specified by the ((WSLCB)) LCB. All costs related to the reporting requirements are borne by the licensee. Cannabis seedlings, clones, plants, lots of useable cannabis or trim, leaves, and other plant matter, batches of extracts, cannabis-infused products, samples, and cannabis waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely upto-date in a system specified by the ((\wideharder{WSLCB})) LCB:
- (a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);
- (b) When plants are to be partially or fully harvested or destroyed;
- (c) When a lot or batch of cannabis, cannabis extract, cannabis concentrates, cannabis-infused product, or cannabis waste is to be destroyed;
- (d) When useable cannabis, cannabis concentrates, or cannabis-infused products are transported;
- (e) Any theft of useable cannabis, cannabis seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing cannabis;
- (f) All cannabis plants eight or more inches in height or width must be physically tagged and tracked individually;
- (g) A complete inventory of all cannabis, seeds, plant tissue, seedlings, clones, all plants, lots of useable cannabis or trim, leaves, and other plant matter, batches of extract, cannabis concentrates, cannabis-infused products, and cannabis waste;
- (h) All cannabis, useable cannabis, cannabis-infused products, cannabis concentrates, seeds, plant tissue, clone lots, and cannabis

waste must be physically tagged with the unique identifier generated by the traceability system and tracked;

- (i) All point-of-sale records;
- (j) Cannabis excise tax records, including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;
- (k) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;
- (1) All vendor samples provided to another licensee for purposes of education or negotiating a sale;
- (m) All samples used for testing for quality by the producer or processor;
 - (n) Samples containing useable cannabis provided to retailers;
- (o) Samples provided to the ((\widehits SLCB)) LCB or their designee for quality assurance compliance checks; and
 - (p) Other information specified by the board.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

- WAC 314-55-087 Recordkeeping requirements for cannabis licen-(1) Cannabis licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a five-year period and must be made available for inspection if requested by an employee of the ((WSLCB)) LCB:
- (a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;
- (b) Bank statements and canceled checks for any accounts relating to the licensed business;
- (c) Accounting and tax records related to the licensed business and each true party of interest;
- (d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;
- (e) All employee records to include, but not limited to, training, payroll, and date of hire;
- (f) Records of each daily application of pesticides applied to the cannabis plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:
 - (i) Full name of each employee who applied the pesticide;
 - (ii) The date the pesticide was applied;
- (iii) The name of the pesticide or product name listed on the registration label which was applied;
- (iv) The concentration and total amount of pesticide per plant; and
- (v) For outdoor production, the concentration of pesticide that was applied to the field. Liquid applications may be recorded as, but are not limited to, amount of product per 100 gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

- (g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing cannabis;
- (h) Production and processing records, including harvest and curing, weighing, destruction of cannabis, creating batches of cannabisinfused products and packaging into lots and units;
- (i) Records of each batch of extracts or infused cannabis products made, including at a minimum, the lots of useable cannabis or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product produced, such as hash oil, shatter, tincture, infused dairy butter, etc.;
 - (j) Transportation records as described in WAC 314-55-085;
 - (k) Inventory records;
- (1) All samples sent to an independent testing lab and the quality assurance test results;
- (m) All free samples provided to another licensee for purposes of negotiating a sale;
- (n) All samples used for testing for quality by the producer or processor;
- (o) Sample jars containing useable cannabis provided to retailers; ((and))
- (p) Records of any theft of cannabis seedlings, clones, plants, trim or other plant material, extract, cannabis-infused product, or other item containing cannabis $((\cdot))$;
- (q) Records of any cannabis product provided free of charge to qualifying patients or designated providers;
- (r) Detailed sale records including, but not limited to, date of sale, sale price, item sold, and taxes assessed;
- (s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090.
- (2) If the cannabis licensee keeps records within an automated data processing (ADP) and/or point-of-sale (POS) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP and/or POS system is acceptable if it complies with the following guidelines:
- (a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.
- (b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.
- (c) Has available a full description of the ADP and/or POS portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.
- (3) The provisions contained in subsections (1) and (2) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

- WAC 314-55-089 Tax and reporting requirements for cannabis licensees. (1) Cannabis retailer licensees must submit monthly report(s) and payments to the ((WSLCB)) LCB. The required monthly reports must be:
- (a) On a form or electronic system designated by the ((\widetilde{WSLCB})) LCB;
- (b) (i) Filed every month, including months with no activity or payment due;
- (ii) Each report will identify total product sales and total medical product sales where the excise tax was exempted pursuant to RCW 69.50.535(2) and WAC 314-55-090, in the form and manner required by the LCB;
- (c) Submitted, with payment due, to the ((WSLCB)) LCB on or before the 20th day of each month, for the previous month. (For example, a report ((listing)) summarizing transactions for the month of January is due by February 20th.) When the 20th day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;
 - (d) Filed separately for each cannabis license held; and
- (e) All records must be maintained and available for review for a ((three)) five-year period on licensed premises (see WAC 314-55-087).
- (2) Cannabis producer licensees: On a monthly basis, cannabis producers must maintain records and report purchases from other licensed cannabis producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the ((WSLCB)) LCB. The act of keeping data completely upto-date in the state traceability system fulfills the monthly reporting requirement.
- (3) Cannabis processor licensees: On a monthly basis, cannabis processors must maintain records and report purchases from licensed cannabis producers, other cannabis processors, production of cannabisinfused products, sales by product type to cannabis retailers, and lost and/or destroyed product in a manner prescribed by the ((WSLCB)) LCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.
 - (4) Cannabis retailer's licensees:
- (a) On a monthly basis, cannabis retailers must maintain records and report purchases from licensed cannabis processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the ((\widehat{WSLCB})) LCB.
- (b) (i) A cannabis retailer licensee must collect from the buyer and remit to the ((WSLCB)) LCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products, except as identified in WAC 314-55-090 and RCW 69.50.535(2).
- (ii) Records of medical cannabis patient excise tax exemptions provided must be maintained as required in WAC 314-55-087 and 314-55-090.
- (c) Product inventory reductions that are not adequately documented will be deemed to be sales and will be assessed the excise tax.
- (d) Excise tax collected in error must either be returned to the customer(s) or remitted to the ((WSLCB)) LCB if returning to the customer(s) is not possible.

- (5) Payment methods: Cannabis excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit cannabis excise tax payments to the board by one of the following means:
- (a) By mail to ((WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504)) LCB;
- (b) By paying through online access ((through the WSLCB traceability system)); or
- (c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW. If a licensee uses a money transmitter service, the licensee must remit payments in U.S. dollars.
- (6) Payments transmitted to the board electronically under this section will be deemed received when received by the ((\WSLCB's)) LCB's receiving account. All other payments transmitted to the ((WSLCB)) LCB under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.
- (7) The ((WSLCB)) LCB may waive the means of payment requirements as provided in subsection (5) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:
- (a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (5) of this section and cannot obtain a cashier's check or money order; or
- (b) Some other circumstance or condition exists that, in the ((\text{WSLCB's})) \text{LCB's} judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.
- (8) If a licensee tenders payment of the cannabis excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a 10 percent penalty.
- (9) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.
- (10) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

NEW SECTION

WAC 314-55-090 Medical cannabis patient excise tax exemption.

- (1) Pursuant to RCW 69.50.535(2), the excise tax levied in RCW 69.50.535(1) does not apply to sales of cannabis that satisfy all the following conditions:
- (a) The sale is made by a cannabis retailer holding a valid medical cannabis endorsement issued pursuant to RCW 69.50.375 and compliant with WAC 314-55-080;

- (b) The sale is made to a qualifying patient or designated provider who has a valid recognition card issued pursuant to RCW 69.51A.230, and is in the database;
- (c) The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;
- (2) Cannabis licensees must retain the following information for five years, consistent with WAC 314-55-087, for every sale where the excise tax is exempted per RCW 69.50.535(2):
 - (a) Date of sale;
 - (b) From the recognition card:
 - (i) The unique patient identifier; and
- (ii) The effective date and expiration date of the recognition card;
- (c) Stock keeping unit (SKU) or unique product identifier of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;
- (d) Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC.
- (3) For any sale where the excise tax was not collected, if a cannabis licensee cannot produce the documentation identified in subsection (2) of this section when requested by the LCB, such excise tax shall be presumed to have been incorrectly exempted, and the retailer shall be responsible for remitting to the LCB the amount of excise tax that should have been collected. Penalties may apply to any incorrectly exempted excise tax payments that need to be remitted as described in this subsection, consistent with WAC 314-55-092.
 - (4) Definitions.
- (a) "Database" means the medical cannabis authorization database as defined in RCW 69.51A.010.
 - (b) "Department" means the Washington state department of health.
- (c) "Designated provider" has the same meaning provided in RCW 69.51A.010.
- (d) "Qualifying patient" has the same meaning provided in RCW 69.51A.010.
- (e) "Recognition card" has the same meaning provided in RCW 69.51A.010.
- (f) "Unique patient identifier" refers to the randomly generated and unique identifying number described in RCW 69.51A.230.
- (g) "Unique product identifier" refers to the unique identifier provided to the LCB consistent with the traceability requirements in WAC 314-55-083.
- (5) Requirements in this section comply with the confidentiality and exemption provisions for personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database as described in RCW 69.51A.230.
- (6) The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).

Washington State Register, Issue 24-19

WSR 24-19-043 PERMANENT RULES CRIMINAL JUSTICE TRAINING COMMISSION

[Filed September 11, 2024, 12:28 p.m., effective October 12, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Revising WAC 139-05-242 and 139-10-222 to clarify the eligibility and process for readmission and to implement additional restrictive measures for readmission into the academy after a dismissal due to a major rule violation. Removing the 24-month suspension and replacing with 60-month for major violations.

Citation of Rules Affected by this Order: Amending WAC 139-05-242 and 139-10-222.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 24-16-092 on August 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0. Date Adopted: September 11, 2024.

> Lacey Ledford Rules Coordinator

OTS-5364.3

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

WAC 139-05-242 Readmission to the basic law enforcement academy. No person may be readmitted to any basic law enforcement academy except as provided in this section and in accordance with WAC 139-06-130.

- (1) Any request for readmission must be made and submitted by the individual's employing agency head, or designee, in accordance with commission policies and procedures.
- (2) Any individual whose academy enrollment was terminated for academic failure, skills deficiency, disciplinary reasons other than those specified in subsection (3) of this section, or who had voluntarily withdrawn for any reason, may be readmitted to a subsequent academy session only if((÷
- (a) The individual's)) the individual meets all the academy admission requirements and their current employing agency head, or their

designee, submits ((to the commission a written request for readmission of the individual to the academy; and

- (b) The executive director of the commission, or designee, is satisfied that any conditions to the individual's readmission specified by the executive director, or designee, have been met)) a new registration for admission into the academy.
- (3) Any person ((whose academy enrollment was terminated)) who was dismissed from an academy for ((an integrity)) a major violation including, but not limited to: Cheating, the making of materially false or misleading statements, harassment, discrimination, the commission of a ((crime)) misdemeanor or felony, regardless of conviction, or other ((violation)) misconduct contained in RCW 43.101.105 will be ineligible for readmission to any subsequent academy within ((24)) 60 months from the date of dismissal regardless of employer or employment status.
- (4) ((An exception to the ineligibility period specified in subsection (3) of this section may be granted at the sole discretion of the commission executive director, or designee, based upon mitigating circumstances.
- (a) No person may be considered for such early readmission after an integrity violation dismissal unless a written request is made by the head of the agency employing the individual at the time of the re-quest.
- (b) Requests for early readmission must follow applicable commission policies and procedures to be considered.
- (c) The executive director's, or designee's, decision under this subsection shall be subject to review only for abuse of discretion.
- (5))) After the ineligibility period specified in subsection (3) of this section has passed, ((or after an exception has been granted by the commission under subsection (4) of this section, the person previously dismissed for an integrity violation may be readmitted to a subsequent academy session only the conditions of subsection (2) of this section are satisfactorily met.
- (6))) an agency head, or their designee, must make a written request for readmission, which requires the submission of an application to the executive director that includes:
- (a) The name of the individual who was dismissed, the date and reason for the dismissal, and the reason for the request for readmission; and
- (b) A statement from the individual who was previously dismissed describing any relevant or professional growth since the dismissal.
- (5) If the executive director, or designee, conditionally grants the application, the individual's agency must submit the full results of the individual's completed background check, psychological examination, and polygraph examination to the commission staff responsible for the certification investigations.
- (6) After the conditional granting of the application and review of the full background, psychological examination and polygraph examination, the executive director, or designee, will issue a decision on the request in writing and the reasons for the decision, if denied.
- (7) Where a request for readmission to the academy is denied, a second request may only be submitted 24 months after the denial. If a second request is denied, no further requests may be filed regardless of the individual's employer or employment status.
- (8) For purposes of this section, reserves and volunteers will be deemed to be employees of the agencies which sponsor them for participation in a training academy.

AMENDATORY SECTION (Amending WSR 22-19-038, filed 9/14/22, effective 10/15/22)

- WAC 139-10-222 Readmission to basic corrections academies. person may be readmitted to any basic corrections academy except as provided in this section and in accordance with WAC 139-06-130.
- (1) Any request for readmission must be made and submitted by the individual's employing agency head, or designee, in accordance with commission policies and procedures.
- (2) Any individual whose academy enrollment was terminated for academic failure, skills deficiency, disciplinary reasons other than those specified in subsection (3) of this section, or who had voluntarily withdrawn for any reason, may be readmitted to a subsequent academy session only if ((+
- (a) The individual's)) the individual meets all the academy admission requirements and their current employing agency head, or their designee, submits ((to the commission a written request for readmission of the individual to the academy; and
- (b) The executive director of the commission, or designee, is satisfied that any conditions to the individual's readmission specified by the commission executive director, or designee, have been met)) a new registration for admission into the academy.
- (3) Any person ((whose academy enrollment was terminated)) who was dismissed from an academy for ((an integrity)) a major violation including, but not limited to: Cheating, the making of materially false or misleading statements, harassment, discrimination, the commission of a ((crime)) misdemeanor or felony, regardless of conviction, or other ((violation)) misconduct contained in RCW 43.101.105 will be ineligible for readmission to any subsequent academy within ((24)) 60 months from the date of dismissal regardless of employer or employment status.
- (4) ((An exception to the ineligibility period specified in subsection (3) of this section may be granted at the sole discretion of the commission executive director, or designee, based upon mitigating circumstances.
- (a) No person may be considered for such early readmission after an integrity violation dismissal unless a written request is made by the head of the agency employing the individual at the time of the request.
- (b) Requests for early readmission must follow applicable commission policies and procedures to be considered.
- (c) The executive director's, or designee's, decision under this subsection shall be subject to review only for abuse of discretion.
- (5))) After the ineligibility period specified in subsection (3) of this section has passed, ((or after an exception has been granted by the commission under subsection (4) of this section, the person previously dismissed for an integrity violation may be readmitted to a subsequent academy session only if the conditions of subsection (2) of this section are satisfactorily met)) an agency head, or their designee, must make a written request for readmission, which requires the submission of an application to the executive director that includes:
- (a) The name of the individual who was dismissed, the date and reason for the dismissal, and the reason for the request for readmission; and

- (b) A statement from the individual who was previously dismissed describing any relevant or professional growth since the dismissal.
- (5) If the executive director, or designee, conditionally grants the application, the individual's agency must submit the full results of the individual's completed background check, psychological examination, and polygraph examination to the commission staff responsible for the certification investigations.
- (6) After the conditional granting of the application and review of the full background, psychological examination and polygraph examination, the executive director, or designee, will issue a decision on the request in writing and the reasons for the decision, if denied.
- (7) Where a request for readmission to the academy is denied, a second request may only be submitted 24 months after the denial. If a second request is denied, no further requests may be filed regardless of the individual's employer or employment status.

WSR 24-19-055 PERMANENT RULES DEPARTMENT OF FINANCIAL INSTITUTIONS

(Securities Division)

[Filed September 12, 2024, 4:09 p.m., effective October 13, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of financial institutions hereby adopts a new chapter of rules for broker-dealers and salespersons of brokerdealers at chapter 460-20C WAC, and repeals the rules in chapters 460-20B, 460-21B, and 460-22B WAC. The new chapter updates the rules consistent with current federal law and Financial Industry Regulatory Authority (FINRA) rules, incorporates North American Securities Administrators Association model rules, and describes the current application procedures and registration requirements for broker-dealers and salespersons of broker-dealers.

Citation of Rules Affected by this Order: New WAC 460-20C-010, 460-20C-015, 460-20C-020, 460-20C-025, 460-20C-030, 460-20C-035, 460-20C-040, 460-20C-045, 460-20C-050, 460-20C-060, 460-20C-080, 460-20C-090, 460-20C-100, 460-20C-110, 460-20C-120, 460-20C-130, 460-20C-140, 460-20C-150, 460-20C-160, 460-20C-170, 460-20C-180, 460-20C-190, 460-20C-200, 460-20C-210 and 460-20C-220; and repealing WAC 460-20B-010, 460-20B-020, 460-20B-030, 460-20B-035, 460-20B-040, 460-20B-050, 460-20B-060, 460-21B-008, 460-21B-010, 460-21B-020, 460-21B-030, 460-21B-040, 460-21B-050, 460-21B-060, 460-21B-070, 460-22B-010, 460-22B-020, 460-22B-030, 460-22B-040, 460-22B-050, 460-22B-060, and 460-22B-090.

Statutory Authority for Adoption: RCW 21.20.070, 21.20.450. Adopted under notice filed as WSR 24-11-013 on May 6, 2024.

Changes Other than Editing from Proposed to Adopted Version: The securities division deleted the proposed unethical practice for broker-dealers that was located at WAC 460-20C-210(50) in the proposed rules. The provision would have made it an unethical practice for broker-dealers to "allow an individual who is not registered as a salesperson in Washington to enter trades on behalf of a retail customers of the broker-dealer who are located in Washington, unless an exemption from registration would apply."

The securities division revised the exam validity extension provision at WAC 460-20C-040 (2)(c) and (d) to add the clause "but were registered as a salesperson in at least one jurisdiction for at least one year immediately preceding the termination of the salesperson registration." This language is consistent with the current eligibility requirements for participating in FINRA's maintaining qualifications program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 18, Amended 0, Repealed 3; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 25, Amended 0, Repealed 22.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 25, Amended 0, Repealed 22.

Number of Sections Adopted using Negotiated Rule Making: New 25, Amended 0, Repealed 22; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0. Date Adopted: September 12, 2024.

> Charlie Clark Director

OTS-4968.5

Chapter 460-20C WAC BROKER-DEALERS AND SALESPERSONS OF BROKER-DEALERS

NEW SECTION

WAC 460-20C-010 Application of chapter. The rules in this chapter apply to broker-dealers and salespersons of broker-dealers registered or required to be registered under RCW 21.20.040. The rules apply to broker-dealers to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

NEW SECTION

WAC 460-20C-015 Cross-reference to other sections relating to broker-dealers and salespersons. Chapter 460-23B WAC applies to salespersons of issuers. Chapter 460-21C WAC applies to the provision of broker-dealer services on the premises of financial institutions.

- WAC 460-20C-020 Definitions. The following definitions apply for the purpose of this chapter and chapters 460-21C and 460-23B WAC:
- (1) "Balance sheet" means a balance sheet prepared in accordance with generally accepted accounting principles in the United States.
- (2) "Branch office" means any location where one or more salespersons of a broker-dealer regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:
- (a) Any location that is established solely for customer service and/or back office-type function where no sales activities are conducted and that is not held out to the public as a branch office;
- (b) Any location that is the salesperson's primary residence,
- (i) Only one salesperson, or multiple salespersons who reside at that location and are members of the same immediate family, conduct business at the location;

- (ii) The location is not held out to the public as an office and the salesperson does not meet with customers at the location;
- (iii) Neither customer funds nor securities are handled at that location;
- (iv) The salesperson is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications, and other communications to the public by such salesperson;
- (v) The salesperson's correspondence and communications with the public are subject to the supervision of the broker-dealer with which the salesperson is associated;
- (vi) Electronic communications are made through the broker-dealer's electronic system;
- (vii) All orders are entered through the designated branch office or an electronic system established by the broker-dealer that is reviewable at the branch office;
- (viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the broker-dealer; and
- (ix) A list of the residence locations is maintained by the broker-dealer;
- (c) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the salesperson and broker-dealer comply with the provisions of (b)(i) through (ix) of this subsection. For the purpose of this subsection, the term "business day" does not include any partial business day provided that the salesperson spends at least 4 hours on such business day at the salesperson's designated branch office during the hours that such office is normally open for business;
- (d) Any office of convenience, where salespersons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;
- (e) Any location that is used primarily to engage in nonsecurities activities and from which the salespersons effect no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the salesperson(s) conducting business at the nonbranch locations are directly supervised;
- (f) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; or
- (g) A temporary location established in response to the implementation of a business continuity plan.

Notwithstanding the exclusions provided in this subsection (2), any location that is responsible for supervising the activities of salespersons of the broker-dealer at one or more nonbranch locations of the broker-dealer is considered to be a branch office.

- (3) "Central Registration Depository" or "CRD" means the national registration system operated by the Financial Industry Regulatory Authority, Inc., pursuant to a contract with the North American Securities Administrators Association.
- (4) "Chief compliance officer" means each person designated as chief compliance officer on Schedule A of Form BD.
- (5) "FINRA" means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and salespersons of broker-dealers that is registered as a national securities

association with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. 78o.

- (6) "FINRA member" means any broker-dealer that is a member of FINRA. "FINRA member" may also include any broker-dealer registered under the Securities Exchange Act of 1934 that has access to and the ability to make filings through the Central Registration Depository.
- (7) "Form BD" means the Uniform Application for Broker-Dealer Registration.
- (8) "Form BDW" means the Uniform Request for Broker-Dealer Withdrawal.
 - (9) "Form BR" means the Uniform Branch Office Registration Form.
- (10) "Form U4" means the Uniform Application for Securities Industry Registration or Transfer.
- (11) "Form U5" means the Uniform Termination Notice for Securities Industry Registration.
- (12) "OTC non-NASDAQ equity securities" means equity securities not traded on a national securities exchange or on NASDAQ. Equity securities quoted on FINRA's OTC Bulletin Board are OTC non-NASDAQ equity securities.
- (13) "Principal" means any person associated with a broker-dealer including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director, or other person occupying similar status or performing similar functions, who is actively engaged in the management of the broker-dealer's investment banking or securities business, such as supervision, solicitation, conduct of business in securities, or the training of persons associated with a broker-dealer for any of these functions. Such persons include, among other persons, a broker-dealer's chief executive officer and chief financial officer (or equivalent officers), and any other person associated with a broker-dealer who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under FINRA rules. The term "actively engaging in the management of the broker-dealer's investment banking or securities business" includes the management of, and the implementation of corporate policies related to, such business, and managerial decision-making authority with respect to the broker-dealer's investment banking or securities business and management level responsibilities for supervising any aspect of such business, such as serving as a voting member of the broker-dealer's executive, management, or operations committees.
- (14) "Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission.
- (15) "Solicited" describes, but is not limited to, any transaction which involves the following action by a broker-dealer or salesperson:
- (a) Making a direct or indirect communication that a customer purchase a security;
- (b) Recommending the purchase of a security through market letters, newsletters, e-mail or other electronic communication, or by otherwise circulating information which recommends the purchase;
- (c) Volunteering information on the issuer, either to a particular customer or to customers generally;
- (d) Engaging in a transaction in a discretionary account or where the delivery of a prospectus or offering circular is required; or
- (e) Bringing a specific security to the attention of the customer through any means including, but not limited to, direct telephone con-

versation, the delivery of promotional material, or the transmission of electronic messages.

NEW SECTION

- WAC 460-20C-025 Filings made through the Central Registration **Depository.** (1) Pursuant to RCW 21.20.050, the director designates the Central Registration Depository (CRD) operated by FINRA to receive and store filings and collect related fees on behalf of the director with respect to broker-dealers that are members of FINRA and their salespersons.
- (2) For the purposes of a filing made through CRD, a document is considered filed with the director when all fees are received and the filing is accepted by CRD on behalf of Washington.
- (3) When a signature or signatures are required by the particular instructions of any filing to be made through CRD, the applicant or a duly authorized officer of the applicant, as required, must affix their electronic signature to the filing by typing their name in the appropriate fields and submitting the filing through CRD. Submission of a filing in this manner will constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filings.

- WAC 460-20C-030 Registration procedure. If you are applying to register as a broker-dealer or salesperson of a broker-dealer under RCW 21.20.040, you must follow the application procedures set forth in this section:
- (1) Broker-dealers. If you are a broker-dealer applying for registration under RCW 21.20.040, you must follow the application procedures set forth in this subsection:
- (a) **FINRA members.** If you are a broker-dealer that is a member of FINRA, you must submit the following through CRD:
- (i) A Form BD completed in accordance with the instructions to the form. The Form BD must designate Washington as a state in which you request registration;
 - (ii) The required fee as set forth in WAC 460-05A-010 (1)(a);
- (iii) An application for registration as a salesperson as set forth in subsection (2)(a) of this section for each officer, salesperson, employee, or other person who directly supervises, or will directly supervise, any registered salespersons associated with the broker-dealer in Washington; and
- (iv) Such additional information as the director may require to complete an application in accordance with RCW 21.20.050(1).
- (b) Nonmembers of FINRA. If you are a broker-dealer that is not a member of FINRA, you must submit the following to the director:
- (i) A Form BD completed in accordance with the instructions to the form. The Form BD must designate Washington as a state in which you request registration;
- (ii) An application for registration as a salesperson as set forth in subsection (2)(a) of this section for each officer, salesperson, employee, or other person who directly supervises, or will di-

rectly supervise, any registered salespersons associated with the broker-dealer in Washington; and

- (iii) A check made out to "state treasurer" for the required fee as set forth in WAC 460-05A-010 (1)(a); and
 - (iv) A cover letter stating the following:
- (A) The type of registration you seek (general securities or a limited registration);
- (B) Why you are not required to register with the Securities and Exchange Commission and FINRA; and
- (C) The name and CRD or Social Security number of each designated principal who has taken the examinations required by WAC 460-20C-040;
- (v) A balance sheet as of a date not more than 120 days before the date of filing, and a computation of your net capital and your aggregate indebtedness ratio as of the same date as the balance sheet. If your net capital is not sufficient to meet the requirements set forth in WAC 460-20C-110, you may satisfy the net capital requirement with a surety bond;
 - (vi) A copy of any subordination agreement;
- (vii) Proof of passage of qualifying examinations by the designated principals as required by WAC 460-20C-040; and
- (viii) Such other information as the director may require to complete an application in accordance with RCW 21.20.050(1).
- (c) Withdrawal of pending application. You may withdraw a pending application for broker-dealer registration by following the instructions for Form BDW and filing a completed Form BDW through CRD. If you are not a member of FINRA, you may file your Form BDW directly with the director.
- (d) Successor broker-dealer. If you are a broker-dealer that is succeeding to and continuing the business of a broker-dealer currently registered under RCW 21.20.040, both you and the predecessor brokerdealer must follow Securities and Exchange Commission Rule 15b1-3 (17 C.F.R. 240.15b1-3 as amended effective January 25, 1993) and file Form BD, an amendment to Form BD, or Form BDW, as applicable. The fee for the transfer of a broker-dealer registration to a successor brokerdealer is set forth in RCW 21.20.340 (9)(a) and is payable directly to the director.
 - (e) Notification of branch office.
- (i) You must notify the director of each branch office in Washington by submitting Form BR through CRD for FINRA broker-dealers and directly to the director for non-FINRA broker-dealers.
- (ii) You must promptly notify the director on Form BR if you engage a new person in charge at a branch office in Washington, acquire a branch office of another broker-dealer in Washington, or relocate a branch office to Washington.
 - (2) Salespersons.
- (a) Salespersons of members of FINRA. If you are seeking to register under RCW 21.20.040 as a salesperson of a broker-dealer that is a member of FINRA, you must submit the following application materials through CRD:
- (i) A completed Form U4 marking Washington as a jurisdiction in which you seek registration; and
 - (ii) The fee as set forth in WAC 460-05A-010 (1)(c).
- (b) Salespersons of broker-dealers that are not members of FINRA. If you are seeking to register under RCW 21.20.040 as a salesperson of a broker-dealer that is not a member of FINRA, you must submit the following application materials directly to the director:

- (i) A completed Form U4 marking Washington as a jurisdiction in which you seek registration;
 - (ii) The fee set forth in WAC 460-05A-010 (1)(c); and
- (iii) Proof of passage of the examinations required by WAC 460-20C-040.
- (c) The director may require the submission of additional information as necessary to complete an application in accordance with RCW 21.20.050(1).

- WAC 460-20C-035 Canadian broker-dealers and salespersons. If you are a Canadian broker-dealer that is a resident in Canada and has no office or other physical presence in the United States and is not an office of, branch of, or a natural person associated with a broker-dealer otherwise registered in the United States, you may transact business in Washington without registering as a broker-dealer pursuant to RCW 21.20.040 under the following conditions:
 - (a) The business you transact is limited to:
- (i) Transactions subject to the exemption provided by RCW 21.20.320(8);
- (ii) Transactions with or for a Canadian person who is temporarily present in Washington and with whom you had a bona fide customer relationship before the person entered Washington; or
- (iii) Transactions with or for a Canadian person in a self-directed tax advantaged retirement plan in Canada of which that person is the holder or contributor; and
 - (b) You file the following with the director:
- (i) A notice of claim of exemption in the form of a cover letter that provides the location of your head office, identifies a contact person, specifies the jurisdictions in Canada in which you are registered as a broker-dealer, and specifies the self-regulatory organization or stock exchange in Canada to which you belong; and
- (ii) A consent to service process on Form U2 pursuant to RCW 21.20.330; and
- (c) You maintain membership in a self-regulatory organization or stock exchange in Canada; and
- (d) You maintain provincial or territorial registration in Cana-
- (e) You disclose to your customers in Washington that you are not subject to the full regulatory requirements of the Securities Act of Washington.
- (2) If you are a salesperson representing a Canadian broker-dealer transacting business in Washington pursuant to subsection (1) of this section, you are not required to register pursuant to RCW 21.20.040 provided that you are registered in the appropriate Canadian jurisdiction.
- (3) If you are a Canadian broker-dealer, the transactions conducted by you and your salespersons pursuant to subsections (1) and (2) of this section will be deemed not to involve the "offer" or "sale" of a security, as those terms are defined in RCW 21.20.005, for purposes of compliance with RCW 21.20.140. Nothing in this section limits the duty of you and your salespersons to comply with RCW 21.20.010 and the rules promulgated thereunder.

(4) If you have previously filed a notice of claim of exemption pursuant to subsection (1)(b) of this section, you must promptly notify the director if there is any material change in the information on file with the director. This includes, but is not limited to, any change with respect to the broker-dealer's eligibility for the exemption. An annual filing is not otherwise required to maintain the exemption.

- WAC 460-29C-040 Examination requirements. (1) Broker-dealers. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must have at least one principal who has passed the Series 24 General Securities Principal Exam. If the principal who took and passed the required examination on your behalf ceases to be your principal, you must promptly update Form BD to identify a substitute principal who has passed the same examination.
 - (2) Salespersons of broker-dealers.
- (a) In order to register under RCW 21.20.040 as a salesperson of a broker-dealer, you must, unless covered by (b) or (c) of this subsection or otherwise waived by the director, have passed within two years of the date of application:
- (i) The Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform Combined State Law Examination; and
- (ii) All relevant examinations required by FINRA and accepted by Washington.
- (b) If you have been registered as a salesperson of a brokerdealer in any state within two years from the date of filing an application for registration, you are not required to retake the examinations in (a) of this subsection to be eligible for registration.
- (c) If you have not been registered as a salesperson of a brokerdealer in any state for more than two years but less than five years, but were registered as a salesperson in at least one jurisdiction for at least one year immediately preceding the termination of the salesperson registration, and you have elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and your appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the Maintaining Qualifications Program, you are deemed in compliance with the examination requirements set forth in (a)(i) of this subsection as long as you elect to participate in the NASAA Examination Validity Extension Program within two years of the termination of your salesperson registration.
- (d) If you have not been registered as a salesperson of a brokerdealer in any state for more than two years but less than five years, but were registered as a salesperson in at least one jurisdiction for at least one year immediately preceding the termination of the salesperson registration, and you have elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and your appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program, you are deemed in compliance with the examination requirements set forth in (a) (ii) of this subsection.
- (e) Successful participation in the FINRA Maintaining Qualifications Program does not extend the Series 66 Uniform Combined State Law

Examination for purposes of investment adviser representative registration.

NEW SECTION

WAC 460-20C-045 Notice of termination of pending applications. The director may send notice to an applicant for broker-dealer or salesperson registration with respect to any pending application in which the applicant has taken no action for the nine months immediately prior to the sending of such notice. The notice will advise such applicant that the pending application will be terminated 30 days from the date of sending such notice unless on or before the termination date the applicant responds in writing to the director showing good cause why the application should be continued as a pending application. If the applicant does not request in writing that the application be continued or show good cause why it should be continued, the director may terminate the pending application.

NEW SECTION

WAC 460-20C-050 Expiration and renewal of registration. (1) Expiration date.

- (a) Broker-dealers.
- (i) If you are a broker-dealer registered under RCW 21.20.040, your registration will be effective until December 31st of the year of issuance.
- (ii) If you are a member of FINRA and you do not file an application to renew your broker-dealer registration by the deadline to submit renewal applications through CRD for the year, or if you are not a member of FINRA and do not file an application to renew your brokerdealer registration by December 31st, your registration will be considered delinquent and subject to the provisions in subsection (3)(a) of this section. If you do not renew your delinquent registration on or before March 1st of the following year, your registration will be considered to have terminated as of December 31st of the previous year.
 - (b) Salespersons.
- (i) If you are registered as a salesperson of a broker-dealer pursuant to RCW 21.20.040, your registration will be effective until December 31st of the year of issuance.
- (ii) If you are a salesperson of a broker-dealer that is a member of FINRA and you do not file an application to renew your registration by the deadline to submit renewal applications through CRD for the year, or if you are a salesperson of a broker-dealer that is not a member of FINRA and you do not submit an application to renew your registration by December 31st, your registration will be considered delinquent and subject to the provisions in subsection (3)(b) of this section. If you do not renew your delinquent registration on or before March 1st of the following year, your registration will be considered to have terminated as of December 31st of the previous year.
 - (2) Renewal procedure.
 - (a) Broker-dealers.

- (i) FINRA members. If you are a broker-dealer who is a member of FINRA, you may renew your broker-dealer registration in Washington by filing the following through CRD prior to the renewal filing deadline set annually by FINRA:
 - (A) Any renewal application required by CRD; and
 - (B) The renewal fee set forth in WAC 460-05A-010 (1)(a); or
- (ii) Nonmembers of FINRA. If you are a broker-dealer who is not a member of FINRA, you may renew your broker-dealer registration in Washington by filing the following with the director no later than December 1st:
 - (A) Form BD updated to reflect any material changes;
- (B) A balance sheet dated not more than 120 days before the date of filing, and a computation of your net capital and your aggregate indebtedness ratio as of the same date as the balance sheet. If your net capital is not sufficient, you may satisfy the net capital requirement in WAC 460-20C-110 with a surety bond; and
 - (C) The renewal fee set forth in WAC 460-05A-010 (1)(a).
 - (b) Salespersons.
- (i) Salespersons for members of FINRA. If you are registered under RCW 21.20.040 as a salesperson of a broker-dealer that is a member of FINRA, you may renew your salesperson registration in Washington by filing the following through CRD prior to the renewal filing deadline set annually by FINRA:
 - (A) Any renewal application required by CRD; and
- (B) The renewal application fee set forth in WAC 460-05A-010 (1)(c); or
- (ii) Other salespersons for broker-dealers. If you are registered under RCW 21.20.040 as a salesperson of a broker-dealer that is not a member of FINRA, you may renew your salesperson registration in Washington by submitting the following directly to the director by December 1st:
 - (A) An updated Form U4; and
- (B) The renewal application fee set forth in WAC 460-05A-010 (1)(c).
 - (3) Delinquent renewal procedure.
- (a) Broker-dealers. If you are a broker-dealer registered under RCW 21.20.040, and you filed a renewal application that was received by the director after the final date to submit renewal applications for the year as set forth in subsection (2)(a) of this section, but on or before March 1st of the next year, you must pay a delinquency fee of \$100 as set forth in RCW 21.20.340(8) in addition to the renewal fee. The delinquent renewal application and fees must be submitted directly to the director. No renewal applications will be accepted thereafter.
- (b) Salespersons. If you are currently registered as a salesperson of a broker-dealer and the director receives your renewal application after deadlines set forth in subsection (2)(b) of this section but on or before March 1st of the next year, you must pay a delinquency fee of \$100 as set forth in RCW 21.20.340(8) in addition to the renewal fee. The delinquent renewal application and fees must be submitted directly to the director. No renewal applications will be accepted thereafter.

- WAC 460-20C-060 Notice of changes by broker-dealers. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must comply with the following requirements:
- (1) You must promptly amend your Form BD if there is a material change to the information contained in the form, or if the information contained in the form is or becomes inaccurate or incomplete in any material respect. If you are a member of FINRA, you must file amendments to Form BD through CRD. If you are not a member of FINRA, you must submit your amended Form BD directly to the director. A material change includes, but is not necessarily limited to, the following:
- (a) A change in the name, ownership, management, or control of a broker-dealer;
- (b) A change in any of a broker-dealer's partners, directors, officers, or persons occupying a similar status performing similar functions:
- (c) A change in the business address or creation or termination of a branch office;
 - (d) A change in the supervisory personnel of a branch office;
- (e) A change in the type of business engaged in by the broker-
- (f) Insolvency, dissolution, liquidation, or a material change in working capital;
 - (q) Noncompliance with minimum net capital requirements;
- (h) Termination of business or discontinuance of activities as a broker-dealer;
- (i) Filing of a criminal charge or civil action against the broker-dealer or any of the broker-dealer's salespersons registered under RCW 21.20.040 which alleges a violation of securities laws;
- (j) Commencement of or notice of intent to commence any action by an administrative agency, regulatory agency, self-regulatory organization, or court to consider whether to deny, suspend, or revoke a registration, impose a fine, injunction, cease or desist, or other penalty upon the broker-dealer, and the result of such action, including subsequent measures taken by any agency, organization, or court;
- (k) Filing of a civil action against any broker-dealer registered under RCW 21.20.040 alleging a cause of action other than a securities violation which, if proven, would materially affect the ability of the broker-dealer to do business, including any action materially affecting the financial condition of the broker-dealer; and
- (1) Any restriction or condition placed on the activities of the broker-dealer by any regulatory agency or self-regulatory organization.
- (2) You must promptly amend the Form U4 for any associated salesperson if there is a material change to the information contained in the form, or if the information contained in the form is or becomes inaccurate or incomplete in any material respect. If you are a member of FINRA, you must file amendments to Form U4 through CRD. If you are not a member of FINRA, you must submit the amended Form U4 directly to the director.
- (3) You must notify the director of the employment or association of any new salesperson in Washington by submitting a completed Form U4 through CRD (or directly to the director if you are not a member of FINRA) within 21 days after the employment or association.
- (4) You must notify the director of the termination of employment of any salesperson in Washington by submitting a completed Form U5

through CRD (or directly to the director if you are not a member of FINRA) within 30 days after the event occurs.

NEW SECTION

- WAC 460-20C-080 Mass transfer of salespersons. If you are a broker-dealer registered or required to be registered under RCW 21.20.040 and you intend to mass transfer your salespersons to another broker-dealer, you must comply with the following procedures:
- (1) FINRA members. If you are a broker-dealer that is a member of FINRA, and you are transferring your salespersons to a broker-dealer that is also a member of FINRA, you must file with the director a roster of all salespersons intending to transfer at least 30 days prior to the effective date of transfer, or such shorter period as the director may permit. Such roster must include the names and CRD numbers of each salesperson as well as an indication as to whether the salesperson has any currently disclosable items to the Disclosure Questions in Section 14 of Form U4. You must submit a transfer fee of \$25 per salesperson with the roster as set forth in RCW 21.20.340 (9)(b). The provisions in this subsection supplement and do not supersede any FIN-RA rules and policies concerning mass transfer of salespersons.
- (2) Nonmembers of FINRA. If you are a broker-dealer that is not a member of FINRA, you must file with the director Form U4 for each salesperson you intend to transfer to another broker-dealer at least 30 days prior to the effective date of transfer. You must submit a transfer fee of \$25 per salesperson as set forth in RCW 21.20.340 (9) (b). No salesperson may conduct the business of a salesperson until the transferred registration becomes effective.

- WAC 460-20C-090 Termination of broker-dealer registration. (1) Termination procedure. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you may terminate your active registration in Washington by following the instructions on Form BDW and filing a completed Form BDW through CRD. If you are not a member of FINRA, you must file Form BDW directly with the director.
- (2) Date of termination. Your broker-dealer registration will terminate 60 days after filing of Form BDW or within such shorter period of time as the director may determine, unless the registrant has any open customer accounts in Washington or a revocation or suspension proceeding is pending when Form BDW is filed.
- (a) If the registrant has any open customer accounts in Washington, the settlement of those accounts is a condition of termination. Additional information may be required by the director and withdrawal is not complete until electronically noticed through CRD.
- (b) If a revocation or suspension proceeding is pending, termination becomes effective upon such conditions as the director, by order, may determine. If no proceeding is pending or commenced, and termination automatically becomes effective, the director may nevertheless commence a revocation or suspension proceeding under RCW 21.20.110 (1) (b) within one year after withdrawal becomes effective, and enter a

revocation or suspension order as of the last date on which registration was effective.

NEW SECTION

- WAC 460-20C-100 Termination of salesperson registration. If you are a salesperson of a broker-dealer registered or required to be reqistered under RCW 21.20.040 and you or your associated broker-dealer terminate your employment or association, the following provisions apply:
- (1) Notification requirement. Your associated broker-dealer must notify the director of the termination by submitting a completed Form U5 through CRD if the broker-dealer is a member of FINRA, or directly to the director if the broker-dealer is not a member of FINRA, within 30 days after the termination occurs.
- (2) Date of termination. Except as provided in subsection (4) of this section, your salesperson registration terminates on the actual date of your termination of employment or association with the brokerdealer.
- (3) Association with new broker-dealer. If you are transferring your association to another broker-dealer registered under RCW 21.20.040, your new broker-dealer must file Form U4 on your behalf no later than 21 days following your association with the new brokerdealer. In that situation, the effectiveness date of your registration with the new broker-dealer will be the date of association with the new broker-dealer.
- (4) Revocation or suspension proceedings. If a revocation or suspension proceeding is pending against you at the time your associated broker-dealer files your Form U5, your termination of registration becomes effective upon such conditions as the director, by order, may determine. If no proceeding is pending or commenced at the time you file your Form U5, and your termination automatically becomes effective, the director may nevertheless commence a revocation or suspension proceeding against you under RCW 21.20.110 (1)(b) within one year after withdrawal becomes effective, and may enter a revocation or suspension order as of the last date on which registration was effective.

- WAC 460-20C-110 Minimum net capital requirements for brokerdealers. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must comply with the following requirements:
- (1) You must meet the minimum net capital requirements established in Securities and Exchange Commission Rule 15c3-1 (17 C.F.R. 240.15c3-1, as amended effective October 21, 2019) and the appendices thereto;
- (2) Members of FINRA. If you are a member of FINRA, you must comply with Securities and Exchange Commission Rule 17a-11 (17 C.F.R. 240.17a-11, as amended effective February 14, 2020). If you are required to provide notice to the Securities and Exchange Commission under Securities and Exchange Commission Rule 17a-11 for failure to com-

ply with the net capital requirements, you must provide the notice and reports required by that rule to the director only upon request; and

(3) Nonmembers of FINRA. If you are not a member of FINRA, you must promptly notify the director if you fail to comply with the net capital requirements as set forth in subsection (1) of this section. The thresholds for notification of the director are the same as those set forth in Securities and Exchange Commission Rule 17a-11 (as amended effective February 14, 2020). You must provide such notification directly to the director in the form of a Financial and Operational Combined Uniform Single (FOCUS) Report.

NEW SECTION

WAC 460-20C-120 Reserve and custody requirements. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must comply with the customer protection reserves and custody of securities requirements set forth in Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. 240.15c3-3, as amended effective October 21, 2019).

- WAC 460-20C-130 Books and records of broker-dealers. (1) If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must make, maintain, and preserve books and records in compliance with the following Securities and Exchange Commission rules:
- (a) Securities and Exchange Commission Rule 10b-10 (17 C.F.R. 240.10b-10, as amended effective July 7, 2014);
- (b) Securities and Exchange Commission Rule 15c2-11 (17 C.F.R. 240.15c2-11, as amended effective December 28, 2020);
- (c) Securities and Exchange Commission Rule 15g-2(c) (17 C.F.R. 240.15g-2(c), as amended effective September 12, 2005);
- (d) Securities and Exchange Commission Rule 15q-4 (b) (2) (17 C.F.R. 240.15g-4 (b) (2), as adopted April 28, 1992);
- (e) Securities and Exchange Commission Rule 15g-5 (b) (2) (17 C.F.R. 240.15g-5 (b) (2), as adopted April 28, 1992);
- (f) Securities and Exchange Commission Rule 15g-6(f) (17 C.F.R. 240.15g-6(f), as adopted April 28, 1992);
- (q) Securities and Exchange Commission Rule 17a-2(c) (17 C.F.R. 240.17a-2(c), as amended effective April 1, 1997);
- (h) Securities and Exchange Commission Rule 17a-3 (17 C.F.R.
- 240.17a-3, as amended effective April 6, 2020);
- (i) Securities and Exchange Commission Rule 17a-4 (17 C.F.R. 240.17a-4, as amended effective January 3, 2023);
- (j) Securities and Exchange Commission Rule 17a-8 (17 C.F.R. 240.17a-8, as amended effective March 2, 2011); and
- (k) Securities and Exchange Commission Rule 17a-13 (b) (5) (17 C.F.R. 240.17a-13 (b) (5), as amended effective September 13, 2022).
- To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, your compliance with such rules as amended will not subject you to enforcement action by the di-

rector for violation of this rule to the extent that the violation results solely from your compliance with the amended rule.

- (2) For purposes of the application of the Securities and Exchange Commission rules referenced in subsection (1) of this section, "member" also means "broker-dealer" as defined by RCW 21.20.005(1), "associated person" also means "salesperson" as defined by RCW 21.20.005(15), and "securities regulatory authority" also means the Washington department of financial institutions.
- (3) If you are a broker-dealer registered or required to be reqistered under RCW 21.20.040 and you are a member of a self-regulatory organization, you must maintain all records which the self-regulatory organization requires you to maintain.
- (4) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced, and maintained and preserved on:
- (a) Paper or hard copy form, as those records are kept in their original form;
- (b) Micrographic media, including microfilm, microfiche, or any similar medium; or
- (c) Electronic storage media, including any digital storage medium or system that meets the terms of this section.
- (5) If you are a broker-dealer required to maintain and preserve records pursuant to this section, you must:
- (a) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
- (b) Provide promptly any of the following that the director may request:
- (i) A legible, true, and complete copy of the record in the medium and format in which it is stored;
 - (ii) A legible, true, and complete printout of the records; and
 - (iii) Means to access, view, and print the records; and
- (c) If the records that the broker-dealer is required to maintain and preserve pursuant to this section are created or maintained on electronic storage media, the broker-dealer must establish and maintain procedures:
- (i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, and destruction;
- (ii) To limit access to the records to properly authorized personnel and the director; and
- (iii) To reasonably ensure that any reproduction of a nonelectronic original record on electronic storage media is complete, true, and legible when retrieved.
- (6) If you are a broker-dealer registered or required to be reqistered under RCW 21.20.040, you must make the records required to be maintained under this section easily accessible for inspection by the director or the director's representatives. In the conduct of an examination authorized by RCW 21.20.100(4), you must honor all requests by the director or the director's representatives to have physical access to all areas of the office which is the subject of the examination. Upon request, you must permit the director or the director's representatives to access, copy, scan, image, and examine all records and electronic data that you are required to retain under this section.
- (7) The director may by order, upon written request and for good cause shown, waive any of the requirements of this section.

NEW SECTION

- WAC 460-20C-140 Financial reporting requirements. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must comply with the following financial reporting requirements:
 - (1) FINRA members.
- (a) If you are a broker-dealer that is a member of FINRA, and your "principal business address" or "firm main address" as disclosed on Form BD is located in Washington, you must file annually with the director through the eFOCUS portal the financial statements that you are required to provide to the Securities and Exchange Commission or its designee; and
- (b) If you are a broker-dealer that is a member of FINRA, and your "principal business address" or "firm main address" as disclosed on Form BD is not located in Washington you must, upon request, provide the director with any financial statements or financial information that you are required to provide to the Securities and Exchange Commission or its designee.
- (2) Nonmembers of FINRA. If you are a broker-dealer that is not a
- member of FINRA, you must comply with the following:

 (a) You must file annually with the director financial statements that have been prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant. You must file these financial statements with the director no later than 120 days after the close of your fiscal year end through the director's eFin electronic filing system or any successor electronic filing system; and
- (b) If your "principal business address" or "firm main address" as reported on Form BD is located in Washington, you must file quarterly Financial and Operational Combined Uniform Single (FOCUS) Reports upon request through the director's eFin electronic filing system or any successor electronic filing system.

- WAC 460-20C-150 Supervision of salespersons and employees. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must reasonably supervise your salespersons and your employees. Reasonable supervision for the purposes of RCW 21.20.110 (1)(j) includes, but is not limited to, the following:
- (a) You must designate a qualified person as supervisor for each salesperson. For the purpose of this section, that person will be referred to as the "designated supervisor" of the salesperson(s) supervised. To be qualified, a designated supervisor must demonstrate competence by passing the examinations required by WAC 460-20C-040. A designated supervisor may only supervise the number of salespersons at any one time that will allow the supervisor to reasonably discharge the duties and obligations under the broker-dealer's established supervisory procedures and systems. The number of salespersons a designated supervisor can reasonably supervise depends upon the nature of the business conducted by the salespersons, technical resources available to the supervisor, additional personnel available to assist the supervisor, and other resources made available to assist the supervisor;

- (b) You must comply with the supervision requirements set forth in the conduct rules of FINRA. For purposes of the application of FIN-RA conduct rules to broker-dealers who are not members of FINRA, "member" means "broker-dealer" as defined by RCW 21.20.005(1) and "associated person" means "salesperson" as defined by RCW 21.20.005(15);
- (c) You must implement procedures for the reasonable oversight of your designated supervisors;
- (d) You must investigate every complaint submitted to the brokerdealer by a customer. You must designate an employee who will investigate, track, and monitor customer complaints. You must respond to all complaints in a timely manner;
- (e) You must establish and maintain written supervisory procedures reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the Securities Act of Washington and the rules adopted thereunder, and other applicable laws, regulations, and rules of self-regulatory organizations;
- (f) You must conduct an annual review of the businesses in which you engage. The review must be reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the Securities Act of Washington and the rules adopted thereunder, and other applicable laws, regulations, and rules of selfregulatory organizations; and
- (g) Pursuant to RCW 74.34.220, you must provide training to your employees who are salespersons registered under RCW 21.20.040 regarding the financial exploitation of vulnerable adults if such employees have contact with customers and access to account information on a regular basis and as part of their jobs. The training must include recognition of indicators of financial exploitation of a vulnerable adult, the manner in which employees may report suspected financial exploitation to the Washington department of social and health services and law enforcement as permissive reporters, and steps employees may take to prevent suspected financial exploitation of a vulnerable adult as authorized by law or agreements between you and your custom-
- (2) The director may require heightened supervision as a condition of the registration of any salesperson who has a history of past misconduct or industry or regulatory-related incidents that may pose a risk to customers. The director may require the submission of a written heightened supervisory plan developed to address the salesperson's past conduct and minimize the risks posed by the salesperson's ongoing activities.
- (a) At a minimum, an effective heightened supervision plan must include the following:
- (i) The designation of a principal with the appropriate training and experience to implement and enforce the plan;
- (ii) A requirement for appropriate additional training for the salesperson subject to the plan to address the nature of incidents necessitating the plan;
- (iii) The written acknowledgment of the heightened supervisory plan by the salesperson subject to the plan and the designated supervisory principal; and
- (iv) A requirement that the supervising principal periodically review the heightened supervision plan to assess its effectiveness; and
- (b) As appropriate under the facts and circumstances, an effective heightened supervision plan may also provide for the following:

- (i) Heightened supervision of the salesperson's business activities including, but not limited to, customer-related activities, employee personal trading accounts, outside business activities, private securities transactions, and restrictions on the sale of certain products;
- (ii) Proximity of the supervising principal to the salesperson; (iii) More frequent contact between the supervising principal and the salesperson;
- (iv) More frequent review of the salesperson's communications, particularly with customers; and
- (v) Expeditious handling of customer complaints related to the salesperson.

NEW SECTION

WAC 460-20C-160 Fraudulent practices of broker-dealers and salespersons. It is an "act, practice, or course of business which operates or would operate as a fraud" as used in RCW 21.20.010(3) for a broker-dealer or salesperson to engage in one or more of the following practices:

- (1) Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
- (2) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;
- (3) In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or salesperson is in possession of material, nonpublic information which would impact on the value of the security;
- (4) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors with similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor;
- (5) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, among other things:
- (a) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees; or
 - (b) Parking or withholding securities;
- (6) Although nothing in this section precludes application of the general antifraud provisions against any person for practices similar in nature to the practices discussed below, the following prohibited activities specifically apply only in connection with the solicitation of a purchase or sale of OTC non-NASDAQ equity securities:
- (a) Failing to comply with rules adopted by the Securities and Exchange Commission under authority granted by the Penny Stock Reform Act of 1990 (Pub. L. No. 101-429), including Securities and Exchange

Commission Rules 15g-1 through 15g-6, 15g-8, 15g-9, and 15g-100 (17) C.F.R. 240.15g-1 as amended effective December 8, 2020; 17 C.F.R. 240.15q-2 as amended effective September 12, 2005; 17 C.F.R. 240.15q-3 through 17 C.F.R. 240.15g-6 as adopted April 28, 1992; 17 C.F.R. 240.15q-8 as adopted April 28, 1992; 17 C.F.R. 240.15q-9 as amended effective May 22, 2017; and 17 C.F.R. 240.15g-100 as amended effective September 12, 2005) which are hereby incorporated by reference;

- (b) Conducting sales contests in a particular security;
- (c) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders;
- (d) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market; and
- (e) Engaging in a pattern of compensating a salesperson in different amounts for effecting sales and purchases in the same security;
- (7) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including, but not limited to, the use of boiler room tactics or use of fictitious or nominee accounts. "Boiler room tactics" include any high-pressure sales tactics that have the effect of creating an artificially short period in which to make a decision or are designed to overcome a customer's reluctance to make an investment. Such tactics include the use of scripts designed to meet the customer's objections, repeated phone calls, phone calls designed to "set up" the customer, threatening tones on the telephone, informing the customer that there is little time to make a decision, and other similar techniques;
- (8) Failing to comply with any prospectus delivery requirement promulgated under state or federal law;
- (9) Giving or permitting to be given, directly or indirectly, anything of value, including gratuities, in excess of \$100 per individual per year to any person, principal, proprietor, employee, agent, or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. For the purpose of this subsection, a gift of any kind is considered a gratuity. This subsection does not apply to contracts of employment with, or compensation for services rendered by the persons enumerated in this subsection provided that a written agreement between you and the person who is to be employed to perform such services exists prior to the time of employment or before the services are to be rendered that includes the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal. You must retain a record of all payments or gratuities in any amount, and a copy of any employment agreement and compensation paid as a result thereof;
- (10) Making or causing to be made any statement in any examination or other proceeding under the Securities Act of Washington or in any document filed with the director if the statement is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect; and
- (11) Advertising or otherwise holding out as providing investment advisory services to others while not registered as an investment adviser in Washington. For the purposes of this subsection, the use of the terms "financial planner," "investment counselor," or similar terms as set forth in WAC 460-24A-040 are deemed to be holding out as providing investment advisory services. This subsection does not apply if you follow the procedures set forth in WAC 460-24A-045.

This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be fraudulent practices.

NEW SECTION

- WAC 460-20C-170 Excessive trading. (1) The phrase "employ any device, scheme, or artifice to defraud" as used in RCW 21.20.010(1) includes any act of any broker-dealer or salesperson designed to effect with or for any customer's account with respect to which such broker-dealer or salesperson is vested with any discretionary power, or with respect to which the broker-dealer or salesperson is able by reason of the customer's trust and confidence to influence the volume and frequency of the trades, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such customer or account.
- (2) For the purposes of subsection (1) of this section, RCW 21.20.035, WAC 460-20C-210(2), and 460-20C-220(6), the director may determine that trades are excessive in size or frequency in view of the financial resources and character of the account based on consideration of the following:
- (a) The cost-to-equity ratio. The cost-to-equity ratio calculates the rate of return the account has to earn during a given period to cover account costs. The cost-to-equity ratio is calculated by dividing the total commissions and costs for the security purchases in an account in a given period of time by the average net equity of the account during that period; and
- (b) The turnover ratio. The turnover ratio is calculated by dividing the total dollar amount of securities purchased in a given period by the average net equity of the account during that period.

The above is not intended to be all inclusive, and thus the director may determine whether trades are excessive by other reasonable means.

- WAC 460-20C-180 Transmission or maintenance of payments received in connection with underwritings. It constitutes a "device, scheme, or artifice to defraud" as used in RCW 21.20.010(1), for any brokerdealer participating in any distribution of securities, other than a firm commitment underwriting, to accept any part of the sale price of any security being distributed unless:
- (1) The money or other consideration received is promptly transmitted to the persons entitled thereto; or
- (2) If the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs:
- (a) The money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto; or

(b) All such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

NEW SECTION

- WAC 460-20C-190 Communications with the public. If you are a broker-dealer or salesperson registered or required to be registered under RCW 21.20.040, it is an "act, practice, or course of business" which operates or would operate as fraud within the meaning of RCW 21.20.010 to, directly or indirectly, publish, circulate, or distribute any communications that do not comply with the following content standards:
- (1) All your communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. You may not omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.
- (2) You may not make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication. You may not publish, circulate, or distribute any communication that you know or have reason to know contains any untrue statement of a material fact or is otherwise false or misleading.
- (3) You must ensure that statements in communications are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return, and yield inherent to investments.
- (4) You must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.
 - (5) All your retail communications and correspondence must:
- (a) Prominently disclose the broker-dealer's name, or the name under which the broker-dealer primarily is conducted as disclosed on your Form BD, and may also include a fictional name by which you are commonly recognized or which is required by any state or jurisdiction;
- (b) Reflect any relationship between the broker-dealer and any nonbroker-dealer or individual who is also named; and
- (c) If it includes other names, reflect which products or services are being offered by the broker-dealer.

This subsection (5) does not apply to so-called "blind" advertisements used to recruit personnel.

NEW SECTION

WAC 460-20C-200 Deferred variable annuities. It constitutes a dishonest or unethical business practice for the purposes of RCW 21.20.110 (1)(g) for a broker-dealer or salesperson registered or required to be registered under RCW 21.20.040 to recommend the purchase or exchange of a deferred variable annuity unless the following requirements are met:

- (1) The broker-dealer and salesperson must have reasonable basis to believe that the transaction is suitable for the customer; and, in particular:
- (a) The broker-dealer and salesperson must have reasonable basis to believe that the customer has been informed, in general terms, of various features of variable annuities, including the following:
 - (i) The potential surrender period and surrender charge;
- (ii) The potential tax penalty if customers sell or redeem deferred variable annuities before reaching the age of 59 1/2
 - (iii) Mortality and expense fees;
 - (iv) Investment advisory fees;
 - (v) The potential charges for and features of riders; and
- (vi) The insurance and investment components of deferred variable annuities; and
 - (vii) Market risk;
- (b) The broker-dealer and salesperson must have reasonable basis to believe the customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit; and
- (c) The broker-dealer and salesperson must have a reasonable basis to believe that the particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and the riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also suitable) for the particular customer based on the information required by subsection (3) of this section;
- (2) In the case of an exchange of a deferred variable annuity, the exchange also must be consistent with the suitability determination required by subsection (1) of this section taking into consideration whether:
- (a) The customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);
- (b) The customer would benefit from product enhancements and improvements; and
- (c) The customer has had another deferred variable annuity exchanged within the preceding 36 months.

The salesperson making the recommendation must document and sign the determinations required by this subsection;

- (3) Prior to recommending the purchase or exchange of a deferred variable annuity, the broker-dealer or salesperson must make reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, tax status, and such other information used or considered to be reasonable in making recommendations to customers;
- (4) Prior to recommending the purchase or exchange of a deferred variable annuity to a retail customer, the broker-dealer or salesper-

son must make inquiry regarding other reasonably available securities and investment strategies offered by the broker-dealer that could achieve the retail customer's investment objectives;

- (5) Promptly after receiving information necessary to prepare a complete and correct application package for a deferred variable annuity, the salesperson who recommends the deferred variable annuity must transmit the complete and correct application package to a principal for review;
- (6) The principal must review and approve the transaction. The principal may approve the transaction only if the principal has determined that there is a reasonable basis to believe the transaction would be suitable based on subsections (1) and (2) of this section;
- (7) The broker-dealer must have established and maintained written supervisory procedures reasonably designed to achieve the standards set forth in this section. The broker-dealer must (a) implement surveillance procedures to determine if any of its salesperson have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchange evidence conduct inconsistent with this section or federal or state securities laws and (b) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of its salespersons who engage in inappropriate exchanges; and
- (8) The broker-dealer must have developed and documented specific training policies or programs reasonably designed to ensure that salespersons who effect and principals who review transactions in deferred variable annuities comply with the requirements of this section and that they understand the material features of deferred variable annuities.

- WAC 460-20C-210 Dishonest or unethical practices—Broker-dealers. If you are a broker-dealer registered or required to be registered under RCW 21.20.040, you must observe high standards of commercial honor and just and equitable principles of trade in conducting your business. If you engage in acts and practices contrary to such standards, this may constitute grounds for denial, suspension, or revocation of your registration. The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1)(q) and as applied to broker-dealers includes, but is not limited to, any of the following:
- (1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;
- (2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- (3) Recommending to a customer the purchase, sale, or exchange any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, age, other investments, tax status, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other relevant information known by the broker-dealer;

- (4) Making a recommendation of any security transaction or investment strategy involving securities (including account recommendations) to a retail customer if the recommendation does not comply with the obligations set forth in Regulation Best Interest (17 C.F.R. 240.121-1 as amended effective September 10, 2019);
- (5) Executing a transaction on behalf of a customer without authorization to do so;
- (6) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;
- (7) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement;
- (8) Failing to segregate customers' free securities or securities held in safekeeping;
- (9) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent, except as permitted by rules of the Securities and Exchange Commission;
- (10) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
- (11) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;
- (12) Charging unreasonable and inequitable compensation, fees, concessions, discounts, commissions, or other allowances for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;
- (13) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
- (14) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer;
- (15) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include, but is not limited to:
- (a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
- (b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading

appearance with respect to the market for the security; provided, however, nothing in this subsection prohibits a broker-dealer from entering bona fide agency cross transactions for its customer;

- (c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;
- (d) Effecting any transaction in a security or a related financial instrument when the salesperson causing such transaction to be executed has material, nonpublic market information concerning an imminent block transaction in that security, a related financial instrument, or a security underlying the related financial instrument prior to the time information concerning the block transaction has been made publicly available or has otherwise become stale or obsolete. For the purposes of this subsection, "related financial instrument" means any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security;
- (e) Effecting any transaction in an equity security on the same side of the market for the broker-dealer's own account at a price that would satisfy the customer order, if the broker-dealer has accepted and holds an order for the same equity security from its customer or the customer of another broker-dealer without immediately executing such order, unless the broker-dealer immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account; and
- (f) Using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security;
- (16) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;
- (17) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;
- (18) Using, ratifying, or condoning any communication, advertising, or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice is the distribution of any nonfactual data, material, or presentation based on conjecture, or unfounded or unrealistic claims or assertions in any customer correspondence, social media, electronic communication, brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure; and the distribution of any communications inconsistent with WAC 460-20C-190;
- (19) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a cus-

tomer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it must be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

- (20) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member by, amongst other things:
- (a) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees; or
 - (b) Parking or withholding securities;
- (21) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond within 14 calendar days to a formal written request or complaint;
- (22) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer;
- (23) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;
- (24) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain, provided that this subsection will apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued;
- (25) Failing to comply with any applicable provision of the Conduct Rules of FINRA or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission, Commodity Futures Trading Commission, Municipal Securities Rulemaking Board, New York Stock Exchange, Chicago Board Options Exchange, Consumer Financial Protection Board, National Futures Association, state securities regulator, state insurance regulator, state or federal banking regulator, or by a self-regulatory organization approved by the Securities and Exchange Commission;
- (26) Any acts or practices enumerated in WAC 460-20C-160 and 460-20C-170;
- (27) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020;
- (28) Operating a securities business while unable to meet current liabilities, or violating any statutory provision, rule, or order relating to minimum capital or surety bond;
- (29) Extending, arranging for, or participating in arranging for credit to a customer in violation of any federal law or regulation including, but not limited to, 15 U.S.C 78k(d) (as amended effective September 23, 1994) or 12 C.F.R. 220.7 (as amended effective April 1, 1998);

- (30) Failing to refrain from soliciting prospective customers who have informed the broker-dealer that such person does not want to be solicited, or conducting business by telephone at unreasonable times;
- (31) Failing to disclose to a person purchasing securities on the premises of a depository institution that such investment is not insured by the Federal Deposit Insurance Corporation or the National Credit Union Association (as applicable), is not a deposit or other obligation of the depository institution or guaranteed by the depository institution, and is subject to investment risk; or failing to cause a written disclosure statement to be presented to, and signed by such person, acknowledging that such person has received such information;
- (32) Altering or creating any document relevant to or on the books and records of any broker-dealer, investment adviser, bank, credit union, insurance company, or commodities futures business with any entry or deletion which is materially false or misleading;
- (33) Failing to comply with a suspension or bar order of the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any other securities regulator;
- (34) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;
- (35) Engaging in acts or practices that constitute deceptive market-timing in the trading of securities including, but not limited to:
 - (a) Breaking a trade into smaller trades to avoid detection; or
- (b) Using multiple accounts, nominees, agent numbers, or multiple agents or representatives to avoid breakpoints, internal controls, exception reports, or other forms of firm or regulatory supervision;
- (36) Engaging in acts or practices that constitute deceptive sales practices in the trading of mutual funds including, but not limited to:
 - (a) Recommending mutual funds just under breakpoints;
- (b) Recommending a share class that does not align with customers' needs; or
- (c) Recommending a mutual fund switch that does not align with customers' needs;
- (37) Disclosing the identity, investment, or other financial information of any customer or former customer unless required by law to do so, or unless consented to by the customer;
- (38) Failing to disclose in any retail communications, correspondence, or other materials used in connection with the promotion or transaction of securities business in Washington, the name of the broker-dealer or the name under which the broker-dealer's business is primarily conducted as disclosed on Form BD. For purposes of this subsection, "other materials" include, but are not limited to, business cards, business stationery, and display signs;
- (39) Representing that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;
- (40) Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative, or unethical;
- (41) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder;

- (42) Making, in the solicitation of customers, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading;
- (43) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer, in writing, and the broker-dealer complies with the terms of the alternative payment arrangement;
- (44) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer, in writing, and the broker-dealer complies with the terms of the alternative payment arrangement;
- (45) Failing to pay and fully satisfy and fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer by the Securities and Exchange Commission, the securities or other financial services requlator of any state or province, or any self-regulatory organization;
- (46) Accessing a customer's account by using the customer's own unique identifying information (such as username and password);
- (47) Failing to provide training regarding the financial exploitation of vulnerable adults pursuant to RCW 74.34.220 to employees who are required to be registered as salespersons under RCW 21.20.040 if such employees have contact with customers and access to account information on a regular basis and as part of their jobs;
- (48) Failing to establish, maintain, and enforce a business continuity and succession plan that identifies procedures to be followed in the event of an emergency or significant business disruption, including a disruption caused by the loss of principals and other key persons;
- (49) Paying, directly or indirectly, any compensation, fees, concessions, discounts, commissions, or other allowances to any person that is not registered as a broker-dealer or salesperson under applicable state or federal securities laws but, by reason of receipt of such payment and the activities related thereto, is required to be so registered under state or federal securities laws; and
- (50) Receiving fees or commissions on customer accounts or holdings if such fees or commissions are made unreasonable because there is no salesperson of the broker-dealer assigned to the account who currently provides the specific services for which the fees or commissions are charged, except as permitted under FINRA Rule 2040(b).

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure, or misstatement of material facts, or manipulative or deceptive practices will also be grounds for denial, suspension, or revocation of registration.

NEW SECTION

WAC 460-20C-220 Dishonest or unethical practices—Salespersons. If you are a salesperson registered or required to be registered under

- RCW 21.20.040, you must observe high standards of commercial honor and just and equitable principles of trade in conducting your business. The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1) (q) and as applied to salespersons includes, but is not limited to, any of the following:
- (1) Engaging in the practice of lending to or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer;
- (2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the salesperson represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;
- (3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;
- (4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the salesperson represents;
- (5) Dividing or otherwise splitting the salesperson's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered with the same brokerdealer, or with a broker-dealer under direct or indirect common control;
- (6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- (7) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, age, other investments, tax status, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other relevant information known by the broker-dealer;
- (8) Recommending the purchase, sale, or exchange of any security or investment strategy involving a security without reasonable grounds to believe that the transaction is suitable based on the performance of reasonable diligence to understand the nature of the recommended security or investment strategy and its potential risks and rewards for investors;
- (9) Making a recommendation of any security transaction or investment strategy involving securities (including account recommendations) to a retail customer if the recommendation does not comply with Regulation Best Interest (17 C.F.R. 240.121-1 as amended effective September 10, 2019);
- (10) Executing a transaction on behalf of a customer without authorization to do so;
- (11) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;
- (12) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement;
- (13) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
- (14) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a

final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

- (15) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such salesperson knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by the broker-dealer, or by any person for whom the salesperson is acting or with whom the salesperson is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer;
- (16) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include, but is not limited to:
- (a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
- (b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;
- (c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;
- (d) Effecting any transaction in a security or a related financial instrument when the salesperson causing such transaction to be executed has material, nonpublic market information concerning an imminent block transaction in that security, a related financial instrument, or a security underlying the related financial instrument prior to the time information concerning the block transaction has been made publicly available or has otherwise become stale or obsolete. For the purposes of this subsection, "related financial instrument" means any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security; and
- (e) Effecting any transaction in an equity security on the same side of the market for the broker-dealer's own account at a price that would satisfy the customer order, if the broker-dealer has accepted and holds an order for the same equity security from its customer or the customer of another broker-dealer without immediately executing such order, unless the broker-dealer immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account;
- (17) Using aggressive, high-pressure, or deceptive sales practices or marketing tactics to affect the market price of the security;
- (18) Using aggressive, high-pressure, or deceptive sales practices or marketing tactics to make unsuitable recommendations;
- (19) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securi-

ties transaction effected by the broker-dealer with or for such customer;

- (20) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;
- (21) Using, ratifying, or condoning any communication, advertising, or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice is the distribution of any nonfactual data, material, or presentation based on conjecture, or unfounded or unrealistic claims or assertions in any customer correspondence, social media, electronic communication, brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure; or the distribution of any communications inconsistent with WAC 460-20C-190;
- (22) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer;
- (23) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;
- (24) Failing to comply with any applicable provision of the Conduct Rules of FINRA or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission, Commodity Futures Trading Commission, Municipal Securities Rulemaking Board, New York Stock Exchange, Chicago Board Options Exchange, Consumer Financial Protection Board, National Futures Association, state securities regulator, state insurance regulator, state or federal banking regulator, or by a self-regulatory organization approved by the Securities and Exchange Commission;
- (25) Any act or practice enumerated in WAC 460-20C-160 or 460-20C-170;
- (26) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020;
- (27) Contradicting or negating the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;
- (28) Extending, arranging for, or participating in arranging for credit to a customer in violation of any federal law or regulation including, but not limited to, 15 U.S.C 78k(d) (as amended effective September 23, 1994) or 12 C.F.R. 220.7 (as amended effective April 1, 1998);
- (29) Altering or creating any document relevant to or on the books and records of any broker-dealer, investment adviser, bank, credit union, insurance company, or commodities futures business with any entry or deletion which is materially false or misleading;

- (30) Failing to comply with a suspension or bar order of the Securities and Exchange Commission, FINRA, any other self-regulatory organization, or any other securities regulator;
- (31) Engaging in acts or practices that constitute deceptive market-timing in the trading of securities including, but not limited to:
 - (a) Breaking a trade into smaller trades to avoid detection; or
- (b) Using multiple accounts, nominees, agent numbers, or multiple agents or representatives to avoid breakpoints, internal controls, exception reports, or other forms of firm or regulatory supervision;
- (32) Engaging in acts or practices that constitute deceptive sales practices in the trading of mutual funds including, but not limited to:
 - (a) Recommending mutual funds just under breakpoints;
- (b) Recommending a share class that does not align with customers' needs; or
- (c) Recommending a mutual fund switch that does not align with customers' needs;
- (33) Disclosing the identity, investment, or other financial information of any customer or former customer unless required by law to do so, or unless consented to by the customer;
- (34) Failing to disclose in any retail communications, correspondence, or other materials used in connection with the promotion or transaction of securities business in Washington the name of the salesperson's associated broker-dealer or the name under which the broker-dealer's business is primarily conducted as disclosed on Form BD. For purposes of this subsection, "other materials" include, but are not limited to, business cards, business stationery, and display signs;
- (35) Representing that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;
- (36) Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative, or unethical;
- (37) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder;
- (38) Making, in the solicitation of customers, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading;
- (39) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and salesperson, in writing, and the salesperson complies with the terms of the alternative payment arrangement;
- (40) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the salesperson, in writing, and the salesperson complies with the terms of the alternative payment arrangement;
- (41) Failing to pay and fully satisfy and fine, civil penalty, order of restitution, order of disgorgement, or similar monetary pay-

ment obligation imposed upon the broker-dealer or salesperson by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization; and

(42) Accessing a customer's account by using the customer's own unique identifying information (such as username and password).

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure, or misstatement of material facts, or manipulative or deceptive practices will also be grounds for denial, suspension, or revocation of registration.

OTS-4965.1

REP<u>EALER</u>

The following chapter of the Washington Administrative Code is repealed:

WAC 46	60-20B-010	Application.
WAC 46	60-20B-020	Definitions.
WAC 46	60-20B-030	Registration procedure.
WAC 46	60-20B-035	Canadian broker-dealers and salespersons.
WAC 46	60-20B-040	Examination requirements.
WAC 46	60-20B-050	Expiration of broker-dealer license, renewal procedure, and delinquency fees.
WAC 46	60-20B-060	Notice of changes by broker-dealers.

OTS-4966.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 460-21B-008	Fraudulent practices of broker-dealers.
WAC 460-21B-010	Churning.
WAC 460-21B-020	Transmission or maintenance of payments received in connection with underwritings.
WAC 460-21B-030	Minimum net capital requirement for broker-dealers.
WAC 460-21B-040	Net capital defined.
WAC 460-21B-050	Books and records of broker-dealers.

Washington State Register, Issue 24-19 WSR 24-19-055

WAC	460-21B-060	Dishonest or unethical business
		practices—Broker-dealers.
WAC	460-21B-070	Supervision of securities salespersons.

OTS-4967.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 460-22B-010	Application.
WAC 460-22B-020	Cross-reference to other sections relating to securities salespersons.
WAC 460-22B-030	Registration procedure.
WAC 460-22B-040	Salesperson registration and examination.
WAC 460-22B-050	Expiration of salesperson license, renewal procedure, and delinquency fees.
WAC 460-22B-060	Duty to update application.
WAC 460-22B-090	Dishonest and unethical business practices—Salespersons.

Washington State Register, Issue 24-19

WSR 24-19-056 PERMANENT RULES DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed September 13, 2024, 9:33 a.m., effective October 14, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules are being amended to make housekeeping changes to several department of children, youth, and families WAC to reflect gender-neutral pronouns. The WAC currently use he/she or his/her instead of they/them. Other minor housekeeping changes are also being made.

Citation of Rules Affected by this Order: Amending WAC 110-01-0200, 110-50-0170, 110-60-0020, 110-147-1305, 110-147-1455, 110-147-1470, 110-147-1600, 110-300-0005, 110-300-0010, 110-300-0120, 110-300-0135, 110-300-0180, 110-300-0196, 110-300-0215, 110-300-0285, 110-300-0291, 110-300-0315, 110-300-0345, 110-300-0400, 110-300-0450, 110-700-0040, 110-700-0045, 110-710-0005, 110-740-0010, 110-740-0040, 110-740-0060, and 110-740-0070.

Statutory Authority for Adoption: RCW 34.05.020.

Adopted under notice filed as WSR 24-13-049 on June 12, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 27, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0. Date Adopted: September 13, 2024.

> Brenda Villarreal Rules Coordinator

OTS-5483.1

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

- WAC 110-01-0200 How the department responds to public records requests. Within five business days of receiving the request, the department will either:
 - (1) Provide the record;
- (2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;
- (3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or

(4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that the department relied upon in its denial.

At ((his or her)) their discretion, the public records officer may send the requested records by email, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

OTS-5484.1

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-50-0170 Under what circumstances does the department choose a relative as the placement for a child in need of out-of-home care? (1) When the department determines that a child needs to be placed outside the home, the department must search for appropriate relatives to care for the child before considering nonrelative placements. See RCW 74.15.020 for the definition of "relative."

- (2) The department reviews and determines the following when selecting a relative placement:
 - (a) The child would be comfortable living with the relative;
 - (b) The relative has a potential relationship with the child;
- (c) The relative is capable of caring for the child and is willing to cooperate with the permanency plan for the child;
 - (d) The relative is able to provide a safe home for the child;
- (e) Each child has ((his or her)) their own bed or crib if the child remains in the home beyond ((thirty)) 30 days.
- (3) The department may consider nonrelated family members as potential resources, if these family members become licensed to provide foster care (see RCW 74.15.030).

OTS-5485.1

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-60-0020 What definitions apply to the department's adoption program? "Agency" means any public or private association, corporation, or individual licensed or certified by the department as a child placing agency under chapter 74.15 RCW or as an adoption agency.

"Adoptee" means a person who is to be adopted or who has been adopted.

"Adoption" means the legal granting of the adoption decree consistent with chapter 26.33 RCW.

"Adoptive parent" refers to a person or persons who seeks to adopt or who has adopted.

"Alleged father" refers to a person whose parent-child relationship has not been terminated, who is not a presumed father under chapter 26.26 RCW, and who alleges ((himself)) to be the father or whom a party alleges to be the father of the child. It includes a person whose marriage to the mother was terminated more than ((three hundred)) 300 days before the birth of the child or who was separated from the mother more than ((three hundred)) 300 days before the birth of the child.

"Approved adoptive home" refers to any person or persons who has been approved for adoption in a preplacement report completed pursuant to RCW 26.33.190.

"Birth parent" means the biological mother or biological or alleged father of a child, including a presumed father under chapter 26.26 RCW, whether or not a court of competent jurisdiction has terminated the person's parent-child relationship.

"Child placing agency" means an agency licensed by the department to place children for temporary care, continued care, or adoption.

"Children's administration" (CA) means the cluster of programs within the department of social and health services responsible for the provision of child welfare, adoption, child protective, child care licensing, and other services to children and their families.

"Department" means the department of ((social and health services (DSHS))) children, youth, and families (DCYF).

"Department placement" refers to the placement of a child for whom the department has placement authority in an approved adoptive

"Division of children and family services" (DCFS) is the division of children's administration that provides child welfare, child protective, family reconciliation, and support services to children in need of protection and their families.

"Division of licensed resources" (DLR) is the division of children's administration responsible for licensing or certifying child care homes and facilities under the authority of chapter 74.15 RCW.

"Foster-adopt" refers to families that are interested in adoption who have an approved adoptive home study and who have also been granted a foster home license in accordance with chapter 388-148 WAC.

"Independent placement" refers to the placement of a child in an adoptive home by a doctor, attorney, or other individual acting as a facilitator.

"Inter-country placement" refers to the placement of a child for adoption who is not a resident and/or citizen of the United States.

"Relative" means a person related by blood, marriage, or legal adoption, as defined in RCW 74.15.020.

"Voluntary adoption plan" means an agreement by the birth parent(s) to the termination of parental rights with a specific proposal for adoptive placement for the child.

OTS-5486.1

AMENDATORY SECTION (Amending WSR 22-11-091, filed 5/18/22, effective 6/18/22

WAC 110-147-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person 18 years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Assessment" means the appraisal or evaluation of a child's physical, mental, social or emotional condition.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Business hours" means hours during the day in which business is commonly conducted. Typically, the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard business hours.

"Capacity" means the age range and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Case plan" means a written document adhered to and followed by a foster child's parents or guardians, foster parent or parents, the department, and all other caregivers. A case plan may include, but is not limited to:

- (a) A description of the type of home or facility in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the department plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child;
- (b) A plan for assuring that the child receives safe and proper care and that services are provided to the parents or guardians, child, and foster parents in order to improve the conditions in the parents' or guardians' home, facilitate return of the child to their own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided under the plan;
- (c) The health and education records of the child, including the most recent information available regarding:
- (i) The names and addresses of the child's health and educational providers;
 - (ii) The child's grade level performance;
 - (iii) The child's school record;
 - (iv) A record of the child's immunizations;
 - (v) The child's known medical conditions;
 - (vi) The child's medications; and
- (vii) Any other relevant health and education information concerning the child determined to be appropriate by the department.
 - (d) Relevant professional assessments of the child;
 - (e) Court orders concerning the child; and
- (f) Any other relevant plan, assessment, knowledge, material, or information concerning the child determined to be appropriate by the department.

"Caseworker" means the primary agency worker assigned to the child through DCYF or other government agency.

"Certification" means a licensed child placing agency (CPA) review that a foster home being supervised by that CPA meets licensing regulations. The final decision for licensing is the responsibility of the department of children, youth, and families.

"Chapter" means chapter 110-147 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

- (a) Under 18 years of age;
- (b) Up to 21 years of age and enrolled in services through the department of social and health services, developmental disabilities administration (DDA) the day prior to ((his or her)) their 18th birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;
- (c) Up to 21 years of age and participates in the extended foster care program;
- (d) Up to 21 years of age with intellectual and developmental disabilities;
- (e) Up to 25 years of age and under the custody of the juvenile rehabilitation system.

"Child placing agency (CPA)" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DDA" means the department of social and health services, developmental disabilities administration.

"Department" means the department of children, youth, and families (DCYF).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide 24-hour care in their home to children.

"Gay" means a sexual orientation to describe individuals who are emotionally or physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or "gender identity" means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible.

"Guardian" has the same meaning in this chapter as defined in RCW 26.33.020(11).

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include, but are not limited to, BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I," "my," "you," and "your" refer to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than 12 months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym, e.g., pansexual, gender nonbinary, and Two-Spirit.

"License" means a permit issued by us confirming that your agency meets the licensing standards established in this chapter.

"Licensed health care provider" means a medical doctor (MD), doctor of osteopathy (DO), doctor of naturopathy (ND), physician's assistant (PA), or an advanced registered nurse practitioner (ARNP).

"Licensing division (LD)" means the division within DCYF that licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensing provider portal" means the internet-connected provider application system used by the department and agencies to securely store digital employment and licensing documents and data.

"Licensor" means either:

- (a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or
- (b) An employee of a CPA who certifies or monitors foster homes supervised by the CPA.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of 24-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support, and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than 18 years of age in licensed care or under the care, custody, and authority of DCYF and the child's whereabouts are unknown or the child has left care without the permission of the child's caregiver or DCYF. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and gendergueer.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Parent" has the same meaning in this chapter as defined in RCW 26.26A.010(15).

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an inhome or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisqender, and nonquestioning individuals.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Two-Spirit" means a modern, pan-indigenous, umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gendervariant, ceremonial, and social role in their cultures. Being Two-Spirit does not imply any specific sexual orientation.

"Volunteer" means a person who provides services without compensation, for your agency.

"Washington state patrol fire protection bureau (WSP/FPB)" means the state fire marshal.

"We," "our," and "us" refer to DCYF, including LD and child welfare staff.

"Young child" refers to a child age 12 months through eight years old.

- WAC 110-147-1455 What are the requirements of case management staff? (1) Case management staff will provide individualized case management and coordination of services.
- (2) Case management staff hired before January 10, 2015, must have five years of experience or a bachelor's degree in social services or closely related field from an accredited school.
- (3) Case management staff hired after January 10, 2015, must have a master's or bachelor's degree in social services or a closely related field from an accredited school.
- (4) Case management staff with a bachelor's degree must consult with a person with a master's degree in social services or closely related field for one hour for every ((twenty)) 20 hours the case management employee works.
 - (5) Case managers must maintain:
- (a) Training, experience, knowledge, and demonstrated skills in each area ((he or she)) they will be supervising;
- (b) Skills and understanding needed to effectively manage cases; and
 - (c) The ability to monitor staff development and training.
- (6) You may use case management staff provided by another agency if these staff meet the educational qualifications and you have a written agreement with the agency describing the scope of services to be provided.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-147-1470 Do I need to employ consultants at my agency? (1) You must have a consultant available as needed to work with your staff, the children you serve, and the children's families. Consultants may be used for case management or program support.

- (2) A case management consultant is responsible to:
- (a) Review treatment, case plans, or adoption home studies as appropriate;
- (b) Provide one hour of consultation/clinical supervision to case management staff without a master's degree in social services or a closely related field for every ((twenty)) 20 hours that person works. Staff consultations shall be documented and available to staff on an as needed basis; and
- (c) Monitor the staff skill development in order to effectively manage their cases.
 - (3) Each case management consultant must have:
- (a) A master's degree in social services or a closely related field from an accredited school;
- (b) The training, experience, knowledge and demonstrated skills for each area in which ((he or she)) they will be supervising or advising;
- (c) The ability to ensure staff develop their skills and understanding needed to effectively manage cases;
 - (d) The ability to monitor staff development and training; and
- (e) Knowledge of mandatory child abuse and neglect reporting requirements.

- WAC 110-147-1600 Do I need a social summary for children under my care? (1) You must develop a written diagnostic social summary for each child accepted for care. The social summary must serve as the basis of the child's admission to your care.
- (2) The social summary must be completed as soon as possible or no later than ((thirty)) 30 days from the date of placement.
- (3) The summary must contain the following information for the child:
- (a) Available copies of psychological or psychiatric evaluations, if any, on the child under care;
- (b) A narrative description of the child's background and family that identifies the immediate and extended family resources;
- (c) Exploration of the child's relationships and the problems and behaviors that have required care away from ((his or her)) their own home;
 - (d) The child's primary and alternate permanency plan;
 - (e) Previous placement history, if any; and
- (f) An evaluation of the child's need for the particular services and type of care you provide.

OTS-5487.2

AMENDATORY SECTION (Amending WSR 23-07-066, filed 3/10/23, effective 4/10/23)

WAC 110-300-0005 Definitions. Unless the context requires otherwise, the following definitions apply to this chapter:

"Accessible to children" means items, areas or materials of an early learning program that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means program curriculum and instruction, activities, spaces, and materials that have been adapted to help children and adults with special need function within their surroundings.

"Active supervision" or "actively supervise" means a heightened standard of care beyond supervision. This standard requires early learning providers to see and hear the children they are responsible for during higher risk activities. Providers must be able to prevent or instantly respond to unsafe or harmful events.

"ADA" refers to the Americans with Disabilities Act, 42 U.S.C. Sec. 12101, et seq.

"Aide" is a person who offers support to early learning program staff.

"Allergy" or "allergies" refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans) pollen, mold, or medication.

"Annual" or "annually" means an event that occurs each calendar year, not to exceed 365 days between occurrences.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to child care or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Assistant director" is a person responsible for the overall management of the center early learning program including the facility and operations.

"Assistant teacher" is a person whose work is to assist a lead teacher or licensee in providing instructional supports to children and implementing a developmentally appropriate program. The assistant must carry out assigned tasks under the supervision of a lead teacher, program supervisor, director, assistant director, or licensee.

"ASTM" refers to the American Society for Testing and Materials.

"Bathroom" means a room containing a built-in, flush-type toilet.

"Bias" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Body of water" or "bodies of water" is a natural area or humanmade area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

"CACFP" means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

"Cannabis" (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"Capacity" means the maximum number of children early learning providers are authorized by the department to have in care at any given time. This includes any children on-site at the early learning program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

"Center early learning program" is a facility providing regularly scheduled care for a group of children birth through 12 years of age for periods of less than 24 hours a day, pursuant to RCW 43.216.010 (1) (a) (child day care center).

"Center early learning program licensee" or "center licensee" means an entity licensed and authorized by the department to operate a center early learning program.

"Certificate of exemption (COE)" has the same meaning in this chapter as in WAC 246-105-020.

"Certificate of immunization status" has the same meaning in this chapter as in WAC 246-105-020.

"Certificate of occupancy" means a document issued by a local government agency or building department that certifies a building complies with applicable building codes and other laws and indicates that the building is in a condition suitable for occupancy.

"Certification" means department approval of a person, home, or facility that is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

"Child" means an individual who is younger than age 13, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse" or "neglect" means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"Child care" refers to supervision of children outside the child's home for periods of less than 24 hours a day.

"Child care basics (CCB)" means curriculum designed to meet the initial basic training requirement for early learning program staff working in licensed or certified programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the early care and education field.

"Chromated copper arsenate (CCA)" is a wood preservative and insecticide that contains roughly 22 percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and playground equipment. Information about the health hazards of arsenic can be found on the department of health's website.

"Clean" or "cleaning" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"Confidential" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"Consistent care" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of early learning program staff.

"Contagious disease" means an illness caused by an infectious

agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"Continuous" means without interruptions, gaps, or stopping.

"Core competencies" are standards required by the department that detail what early learning providers need to know and are able to do to provide quality care and education for children and their families.

"CPSC" means the United States Consumer Product Safety Commission.

"Cultural" or "culturally" means in a way that relates to the ideas, customs, and social behavior of different societies.

"Curriculum philosophy" means a written statement of principles developed by an early learning provider to form the basis of the learning program of activities, including age appropriate developmental learning objectives for children.

"DCYF" or "the department" refers to the Washington state department of children, youth, and families.

"Developmental screening" is the use of standardized tools to identify a child at risk of a developmental delay or disorder. (Source: American Academy of Pediatrics, Healthy Child Care America, 2009).

"Developmentally appropriate" means:

- (a) Early learning providers interact with children in a way that recognizes and respects each child's chronological and developmental
 - (b) Knowledge about how children grow and learn;
 - (c) Reflects the developmental level of the individual child; and
- (d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"Director" means the person responsible for the overall management of a center early learning program including the facility and operation.

"Disability" or "disabilities" has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

- (a) The application of a fragrance-free chlorine bleach and water solution following the department of health's current guidelines for mixing bleach solutions for child care and similar environments; or
- (b) The application of other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"Drinking water" or "potable water" is water suitable for drinking by the public as determined by the Washington state department of health or a local health jurisdiction.

"Dual language learners" refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: The Washington State Early Learning and Development Guidelines.)

"Early achievers" is a statewide system of high-quality early learning that connects families to early learning programs with the help of an easy to understand rating system and offers coaching, professional development, and resources for early learning providers to support each child's learning and development.

"Early childhood education and assistance program (ECEAP)" is a comprehensive preschool program that provides free services and support to eligible children and their families.

"Early childhood education (ECE) initial certificate" (12 quarter credits) is Washington's initial certificate in early childhood education and serves as the point of entry for a career in early learning and covers foundational content for early learning professionals.

"Early childhood education (ECE) short certificate," an initial certificate plus eight quarter credits, is Washington state's short

certificate in early childhood education and offers areas of specialization, building on the state's initial certificate.

"Early childhood education (ECE) state certificate, " a short certificate plus 27 quarter credits, is Washington state's certificate in early childhood education and is the benchmark for Level 2 core competencies for early care and education professionals and prepares for the next step, an associate's degree in early childhood education.

"Early learning program" refers to regularly scheduled care for a group of children birth through 12 years of age for periods of less than 24 hours, licensed by the department.

"Early learning program space" means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Early learning program staff" refers to all persons who work, substitute, or volunteer in an early learning program during hours when children are or may be present, excluding licensees.

"Early learning provider" or "provider" refers to an early learning licensee or designee who works in an early learning program during hours when children are or may be present. Designees include center directors, assistant directors, program supervisors, lead teachers, assistants, aides, and volunteers.

"Electronic record" means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to DCYF's current database of professional records of individual early learning providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(3). An early learning provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Equivalency" when referring to staff qualifications means an individual is allowed to meet the requirements of this chapter through a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the named credential.

"Exempt" or "exemption" means, as applied to immunizations, a type of immunization status where a child has not been fully immunized against one or more vaccine preventable diseases required by chapter 246-105 WAC for full immunization due to medical, religious, philosophical or personal reasons. Under chapter 362, Laws of 2019, if a child plans on attending or is attending a center early learning program, a philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

"Expel" or "expulsion" means to end a child's enrollment in an early learning program. An early learning provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

"Family home early learning program" means an early learning program licensed by the department where a family home licensee provides child care or education services for 12 or fewer children in the family living quarters where the licensee resides as provided in RCW 43.216.010 (1)(c) (family day care provider).

"Family home early learning program licensee" or "family home licensee" means an individual licensee authorized by the department to operate a family home early learning program within the licensee's family living quarters.

"Family living quarters" means a family home licensee or applicant's residence and other spaces or building on the premises.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Foundational quality standards" refers to the administrative and regulatory requirements contained within this chapter. These standards are designed to promote the development, health, and safety of children enrolled in center and family home early learning programs. The department uses these standards to equitably serve children, families, and early learning providers throughout Washington state.

"Gay" means physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or "gender identity" means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible, not permanent.

"Good repair" means about 80 percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

"Household member" means one or more individuals who live in the same dwelling or share living arrangements, and may consist of family relatives or other groups of people.

"Immunization" is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of an early learning program.

"Inactive" when used by the department to indicate a licensing status, means early learning providers who have requested and have been approved to temporarily cease caring for children and close their early learning program.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

"Infant" is a child birth through 11 months of age.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to

maintain staff standards and qualifications while employed as an early learning provider.

"Inspection report" means a written or digital record developed by the department that identifies violations of licensing standards. An inspection report is separate from and does not include a facility licensing compliance agreement (FLCA).

"Internal review process" has the same meaning in this chapter as

in RCW 43.216.395, as now or hereafter amended.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lead teacher" means an early learning provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym (e.g., pansexual, gender nonbinary, and Two-spirit).

"License" means a permit issued by the department legally authorizing an applicant to operate an early learning program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care or early learning services in a center or family home setting.

"Lockdown" means restricted to an interior room with few or no

windows while the facility or building is secured from a threat.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Nonexpiring license" means a license that is issued to an early learning provider following the initial licensing period, pursuant to chapter 43.216 RCW.

"Operating hours" means the hours listed in an early learning program parent handbook when the program is open and providing care and services to children.

"Parent" or "guardian" means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Peer interaction" refers to relationships children have with one another, which includes how infants and toddlers play near one another and how preschoolers play together, communicate, and whether they fight or get along.

"Personal needs" means an early learning provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" means a nonclimbable fence or wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and a device used to open the locks which is inaccessible to children but readily available to staff.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

"Preschool-age children" means children 30 months through six years of age not attending kindergarten or elementary school.

"Preservice training" means professional development standards or requirements for early learning program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as in RCW 43.216.010(23).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program supervisor" means the center early learning provider responsible for planning and supervising the learning and activity program.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and

"Revocation" or "revoke" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to close an early learning program and permanently remove the license.

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the early learning program, for example, feeding, diapering, toileting, napping, resting, playing, and learning.

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement program changes to bring an early learning program into compliance with this chapter and chapter 43.216 RCW. Safety plans are developed at meetings involving at least an early learning provider and a department licensor and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the early learning program. Program changes must be agreed to in writing and signed by all participants at the meeting. Safety plans expire 30 calendar days after being signed by all parties. Safety plans may only be extended for an additional 30 calendar days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

- (a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or
 - (b) Cleaning and rinsing, followed by using:
- (i) A fragrance-free chlorine bleach and water solution following the department of health's current guidelines for mixing bleach solutions for child care and similar environments; or
- (ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School-age children" means a child who is five years of age through 12 years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Screen time" means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

"Serious injury" means an injury resulting in an overnight hospital stay; a severe neck or head injury; choking or serious unexpected breathing problems; severe bleeding; shock or an acute confused state; sudden unconsciousness; dangerous chemicals in eyes, on skin, or ingested; near drowning; one or more broken bones; a severe burn requiring professional medical care; poisoning; or an overdose of a chemical substance.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"Shelter in place" means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Sleep equipment" or "sleeping equipment" includes a bed, cot, mattress, mat, crib, bassinet, play pen, play yard or "pack and play" but does not include a car seat or infant swing.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisqender, and nonquestioning individuals.

"Special needs" is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Staff" means any early learning provider providing care in the early learning program.

"Strengthening families program self-assessment" refers to a research informed approach to increase family strengths, enhanced child development, and reduce the likelihood of child abuse and neglect. It is based on engaging families, programs, and communities in building five protective factors:

- (a) Parental resilience;
- (b) Social connections;
- (c) Knowledge of parenting and child development;
- (d) Concrete support in times of need; and
- (e) Social and emotional competence of children.

"Supervise" or "supervision" means an early learning provider must be able to see or hear the children they are responsible for at all times. Early learning providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Early learning providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. An early learning provider must reassess and adjust their supervision each time child care activities change. See "active supervision" for a heightened standard of

"Suspend" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a pool that has a water depth greater than two feet (24 inches).

"Technical assistance" means a service provided to early learning providers by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

"Toddler" means a child 12 months through 29 months of age.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Transition" is the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.

"Tummy time" means placing an infant in a nonrestrictive prone position, lying on ((his or her)) their stomach when not in sleeping equipment.

"Two-spirit" means a modern, pan-indigenous umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gendervariant, ceremonial, and social role in their cultures. Being Two-spirit does not imply any specific sexual orientation.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the early learning provider must make inaccessible to the children during child care hours.

"Unsupervised access" as used throughout this chapter has the same meaning as in WAC 110-06-0020.

"Usable space" means the areas that are available at all times for use by children in an early learning program and meets licensing requirements.

"USDA" means the U.S. Department of Agriculture.

"Vapor product" means any:

- (a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;
- (b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or
- (c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the United States Food and Drug Administration that is marketed and sold for such approved purpose.

"Variance" is an official approval by the department to allow an early learning program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department may grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The provider may challenge a variance disapproval on a department form.

"Volunteer" includes any person who provides labor or services to an early learning provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or is an authorized person pursuant to WAC 110-300-0345 (1)(c). "Unsupervised access" has the same meaning here as in WAC 110-06-0020.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet (24 inches).

"Waiver" is an official approval by the department allowing an early learning provider not to meet or satisfy a rule in this chapter due to specific needs of the program or an enrolled child. The department may grant a request for waiver if the proposed waiver provides

clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The provider may challenge a waiver disapproval on a department form.

"Walking independently" means an individual is able to stand and move easily without the aid or assistance of holding on to an object, wall, equipment, or another individual.

"Washington state early learning and development guidelines" refers to quidelines published by the department, the Washington state office of superintendent of public instruction (OSPI), and thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"Water activities" means early learning program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflect harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"WLAD" means the law against discrimination, chapter 49.60 RCW. "Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the early learning provider must sign a written food plan.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

- WAC 110-300-0010 License required. (1) An individual or entity that provides child care and early learning services for a group of children, birth through ((twelve)) <u>12</u> years of age, must be licensed by the department, pursuant to RCW 43.216.295, unless exempt under RCW 43.216.010(2) and WAC 110-300-0025.
- (2) The department must not license a department employee or a member of the employee's household if the employee is involved directly, or in an administrative or supervisory capacity in the:
 - (a) Licensing process;
 - (b) Placement of a child in a licensed early learning program; or
 - (c) Authorization of payment for the child in care.
- (3) A license is required when an individual provides child care and early learning services in ((his or her)) their family home:
- (a) Outside the child's home on a regular and ongoing basis for one or more children not related to the licensee; or
- (b) For preschool age children for more than four hours a day. As used in this chapter, "not related" means not any of the relatives listed in RCW 43.216.010 (2)(a).
- (4) The department may license a center located in a private family residence when the portion of the residence accessible to children is:

- (a) Used exclusively for children during the center's operating hours or when children are in care; or
 - (b) Separate from the family living quarters.

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0120 Providing for personal, professional, and health needs of staff. (1) A licensee must provide for the personal and professional needs of staff by:

- (a) Having a secure place to store personal belongings that is inaccessible to children;
- (b) Having a readily accessible phone to use for emergency calls or to contact the parents of enrolled children; and
 - (c) Providing file and storage space for professional materials.
- (2) An early learning provider must be excluded from the early learning premises when that provider's illness or condition poses a risk of spreading a harmful disease or compromising the health and safety of others. The illnesses and conditions that require a staff member to be excluded are pursuant to WAC 110-300-0205.
- (3) If a staff person has not been vaccinated, or shown documented immunity to a vaccine preventable disease, that person may be required by the local health jurisdiction or the department to remain off-site during an outbreak of a contagious disease described in WAC 246-110-010. A center early learning program staff person or volunteer who has not been vaccinated against measles, mumps, and rubella or shown proof of immunity from measles must not be allowed on the center early learning premises except as provided in (a) and (b) of this subsection.
- (a) A center early learning program may allow a person to be employed or volunteer on the center early learning premises for up to ((thirty)) 30 calendar days if the person signs a written attestation that the employee or volunteer has received the measles, mumps, and rubella vaccine, or is immune from measles, but requires additional time to obtain and provide ((his or her)) their immunization records. The required records must include immunization records indicating the employee or volunteer has received the measles, mumps, and rubella vaccine; or records that show proof of immunity from measles through documentation of laboratory evidence of antibody titer or a health care provider's attestation of the person's history of measles sufficient to provide immunity against measles.
- (b) A center early learning program may allow a person to be employed or volunteer on the center early learning premises if the person provides the center early learning program with a written certification signed by a health care practitioner, as defined in RCW 28A.210.090(3), that the measles, mumps, and rubella vaccine is, in the practitioner's judgment, not advisable for the person. This subsection (3)(b) does not apply if a person's health care practitioner determines that the measles, mumps, and rubella vaccine is no longer contraindicated.
- (4) An early learning program's health policy, pursuant to WAC 110-300-0500, must include provisions for excluding or separating staff with a contagious disease described in WAC 246-110-010, as now and hereafter amended.

- WAC 110-300-0135 Routine care, play, learning, relaxation, and (1) An early learning provider must have accessible and child-size furniture and equipment (or altered and adapted in a family home early learning program) in sufficient quantity for the number of children in care. Tables must not be bucket style.
 - (2) Furniture and equipment must be:
 - (a) Maintained in a safe working condition;
 - (b) Developmentally and age appropriate;
- (c) Visually inspected at least weekly for hazards, broken parts, or damage. All equipment with hazardous, broken parts, or damage must be repaired as soon as possible and must be inaccessible to children until repairs are made according to the manufacturer's instructions, if available;
- (d) Arranged in a way that does not interfere with other play equipment;
- (e) Installed and assembled according to manufacturer's specifications;
 - (f) Stored in a manner to prevent injury; and
- (q) Accessible to the child's height so that ((he or she)) they can find, use, and return materials independently.
- (3) An early learning provider must supply soft furnishings in licensed space accessible to children. Soft furnishings may include, but are not limited to, carpeted areas and area rugs, upholstered furniture, cushions or large floor pillows, and stuffed animals.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

- WAC 110-300-0180 Meal and snack schedule. (1) An early learning provider must serve meals and snacks to children in care as follows:
- (a) Meals and snacks must be served not less than two hours and not more than three hours apart unless the child is asleep;
 - (b) Children in care for five to nine hours:
 - (i) At least one meal and two snacks; or
 - (ii) Two meals and one snack.
 - (c) Children in care for more than nine hours:
 - (i) Two meals and two snacks; or
 - (ii) Three snacks and one meal.
 - (d) After school snack, dinner, evening snack, and breakfast:
- (i) A snack or meal must be provided to a child that arrives to the early learning program after school;
- (ii) Dinner must be provided to children in nighttime care if a child is at an early learning program after ((his or her)) their dinnertime, or has not had dinner;
- (iii) An evening snack must be provided to children in nighttime care;
- (iv) Breakfast must be provided to children in nighttime care if a child remains in care after the child's usual breakfast time; and
- (v) A breakfast or morning snack must be available to children in care.

- (2) At least once per day, an early learning provider must offer children an opportunity for developmentally appropriate tooth brushing activities.
- (a) Tooth brushing activities must be safe, sanitary, and educational.
- (b) Toothbrushes used in an early learning program must be stored in a manner that prevents cross contamination.
- (c) The parent or guardian of a child may opt out of the daily tooth brushing activities by signing a written form.

- WAC 110-300-0196 Food sources. (1) Food prepared and served from an early learning program must not be tampered with or spoiled.
- (2) Food prepared and served from an early learning program must be obtained from an approved source licensed and inspected by the local health jurisdiction, the Washington state department of agriculture (WSDA), or the USDA. Food items not approved to be served to children in care include:
- (a) Meat, fish, poultry, eggs, or milk that has not been inspected by the USDA or WSDA;
 - (b) Home canned food;
- (c) Game meat or other meat that has not been inspected by the WSDA or USDA;
- (d) Leftover food that was previously served from outside of the early learning program; or
 - (e) Food from roadside stands selling without a permit.
- (3) Food not prepared on-site by an early learning provider, pursuant to WAC 110-300-0195(2), must be provided by:
- (a) A licensed food establishment, kitchen, or catering business that meets food service requirements (chapter 246-215 WAC) and is regularly inspected by a local health jurisdiction;
- (b) A parent or quardian for ((his or her)) their own children; or
 - (c) A manufacturer of prepackaged food.
- (4) Fruits and vegetables (produce) grown on-site in a garden as part of an early learning program may be served to children as part of a meal or snack. Prior to preparing and serving:
- (a) The produce must be thoroughly washed and scrubbed in running cold water to remove soil and other contaminants;
 - (b) Damaged or bruised areas on the produce must be removed; and
 - (c) Produce that shows signs of rotting must be discarded.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0215 Medication. (1) Managing medication. A medication management policy must include, but is not limited to, safe medication storage, reasonable accommodations for giving medication, mandatory medication documentation, and forms pursuant to WAC 110-300-0500.

- (2) Medication training. An early learning provider must not give medication to a child if the provider has not successfully completed:
- (a) An orientation about the early learning program's medication policies and procedures;
- (b) The department standardized training course in medication administration that includes a competency assessment pursuant to WAC 110-300-0106(10) or equivalent training; and
- (c) If applicable, a training from a child's parents or guardian (or an appointed designee) for special medical procedures that are part of a child's individual care plan. This training must be documented and signed by the provider and the child's parent or guardian (or designee).
- (3) Medication administration. An early learning provider must not give medication to any child without written and signed consent from that child's parent or guardian, must administer medication pursuant to directions on the medication label, and using appropriate cleaned and sanitized medication measuring devices.
- (a) An early learning provider must administer medication to children in care as follows:
- (i) Prescription medication. Prescription medication must only be given to the child named on the prescription. Prescription medication must be prescribed by a health care professional with prescriptive authority for a specific child. Prescription medication must be accompanied with medication authorization form that has the medical need and the possible side effects of the medication. Prescription medication must be labeled with:
 - (A) A child's first and last name;
 - (B) The date the prescription was filled;
- (C) The name and contact information of the prescribing health professional;
- (D) The expiration date, dosage amount, and length of time to give the medication; and
 - (E) Instructions for administration and storage.
- (ii) Nonprescription oral medication. Nonprescription (over-thecounter) oral medication brought to the early learning program by a parent or guardian must be in the original packaging.
- (A) Nonprescription (over-the-counter) medication needs to be labeled with child's first and last name and accompanied with medication authorization form that has the expiration date, medical need, dosage amount, age, and length of time to give the medication. Early learning providers must follow the instructions on the label or the parent must provide a medical professional's note; and
- (B) Nonprescription medication must only be given to the child named on the label provided by the parent or guardian.
- (iii) Other nonprescription medication: An early learning provider must receive written authorization from a child's parent or quardian and health care provider with prescriptive authority prior to administering if the item does not include age, expiration date, dosage amount, and length of time to give the medication:
 - (A) Vitamins;
 - (B) Herbal supplements;
 - (C) Fluoride supplements;
 - (D) Homeopathic or naturopathic medication; and
- (E) Teething gel or tablets (amber bead necklaces are prohibited).

- (iv) Nonmedical items. A parent or guardian must annually authorize an early learning provider to administer the following nonmedical items:
- (A) Diaper ointments (used as needed and according to manufacturer's instructions);
 - (B) Sunscreen;
 - (C) Lip balm or lotion;
- (D) Hand sanitizers or hand wipes with alcohol, which may be used only for children over ((twenty-four)) 24 months old; and
 - (E) Fluoride toothpaste for children two years old or older.
- (v) An early learning provider may allow children to take ((his or her)) their own medication with parent or guardian authorization. The early learning staff member must observe and document that the child took the medication.
- (vi) An early learning provider must not give or permit another to give any medication to a child for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a qualified health care professional.
- (b) Medication documentation (excluding nonmedical items). An early learning provider must keep a current written medication log that includes:
 - (i) A child's first and last name;
 - (ii) The name of the medication that was given to the child;
 - (iii) The dose amount that was given to the child;
 - (iv) Notes about any side effects exhibited by the child;
- (v) The date and time of each medication given or reasons that a particular medication was not given; and
- (vi) The name and signature of the person that gave the medica-
- (c) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements. An early learning provider must comply with the following additional medication storage requirements:
 - (i) Medication must be inaccessible to children;
- (ii) Controlled substances must be locked in a container or cabinet which is inaccessible to children;
- (iii) Medication must be kept away from food in a separate, sealed container; and
- (iv) External medication (designed to be applied to the outside of the body) must be stored to provide separation from internal medication (designed to be swallowed or injected) to prevent cross contamination.
- (d) An early learning provider must return a child's unused medication to that child's parent or guardian. If this is not possible, a provider must follow the Food and Drug Administration (FDA) recommendations for medication disposal.
- (e) An early learning provider must not accept or give to a child homemade medication, such as diaper cream or sunscreen.

WAC 110-300-0285 Infant and toddler nutrition and feeding. (1) An early learning provider must have and follow written policies on

providing, preparing, and storing breast milk or infant formula and food.

- (2) After consulting a parent or quardian, an early learning provider must implement a feeding plan for infants and toddlers that includes:
- (a) A plan to support the needs of a breastfeeding mother and infant by:
- (i) Providing an area for mothers to breastfeed their infants; and
- (ii) Providing educational materials and resources to support breastfeeding mothers.
- (b) Feeding infants and toddlers when hungry according to their nutritional and developmental needs, unless medically directed;
- (c) Serving only breast milk or infant formula to an infant, unless the child's health care provider offers a written order stating otherwise; and
 - (d) When bottle feeding, an early learning provider must:
- (i) Test the temperature of bottle contents before feeding to avoid scalding or burning the child's mouth;
- (ii) Hold infants and, when developmentally appropriate, toddlers to make eye contact and talk to them;
- (iii) Stop feeding the infant or toddler when ((he or she)) they shows signs of fullness; and
- (iv) Not allow infants or toddlers to be propped with bottles or given a bottle or cup when lying down.
- (e) Transitioning a child to a cup only when developmentally appropriate;
- (f) Introducing age-appropriate solid foods no sooner than four months of age, based on an infant's ability to sit with support, hold ((his or her)) their head steady, close ((his or her)) their lips over a spoon, and show signs of hunger and being full, unless identified in written food plan pursuant to WAC 110-300-0190 or written medical approval;
- (g) Not adding food, medication, or sweeteners to the contents of a bottle unless a health care provider gives written consent;
- (h) Not serving ((one hundred)) <u>100</u> percent juice or any sweetened beverages (for example, juice drinks, sports drinks, or tea) to infants less than ((twelve)) 12 months old, unless a health care provider gives written consent, and helping prevent tooth decay by only offering juice to children older than ((twelve)) 12 months from a cup;
- (i) Increasing the texture of the food from strained, to mashed, to soft table foods as a child's development and skills progress between six and ((twelve)) 12 months of age. Soft foods offered to older infants should be cut into pieces one-quarter inch or smaller to prevent choking;
- (j) Allowing older infants or toddlers to self-feed soft foods from developmentally appropriate eating equipment;
- (k) Placing infants or toddlers who can sit up on their own in high chairs or at an appropriate child-size table and chairs when feeding solid foods or liquids from a cup, and having an early learning provider sit with and observe each child eating. If high chairs are used, each high chair must:
 - (i) Have a base that is wider than the seat;
- (ii) Have a safety device, used each time a child is seated, that prevents the child from climbing or sliding down the chair;
 - (iii) Be free of cracks and tears; and
 - (iv) Have a washable surface.

- (1) Not leaving infants or toddlers more than ((fifteen)) 15 minutes in high chairs waiting for meal or snack time, and removing a child as soon as possible once ((he or she finishes)) they finish eating;
- (m) Preventing infants or toddlers from sharing the same dish or utensil;
- (n) Not serving any uneaten food from the serving container after the intended meal; and
- (o) Not serving food to infants or toddlers using polystyrene foam (styrofoam) cups, bowls, or plates.

AMENDATORY SECTION (Amending WSR 19-14-076, filed 7/1/19, effective 8/1/19)

- WAC 110-300-0291 Infant safe sleep practices. (1) An early learning provider must follow safe infant sleep practices when infants are napping or sleeping by following the current standard of American Academy of Pediatrics concerning safe sleep practices including SIDS/ SUIDS risk reduction, including:
- (a) Actively supervising infants by visibly checking every ((fifteen)) 15 minutes and being within sight and hearing range, including when an infant goes to sleep, is sleeping, or is waking up;
- (b) Placing an infant to sleep on ((his or her)) their back or following the current standard of American Academy of Pediatrics. If an infant turns over while sleeping, the provider must return the infant to ((his or her)) their back until the infant is able to independently roll from back to front and front to back;
- (c) Not using a sleep positioning device unless directed to do so by an infant's health care provider. The directive must be in writing and kept in the infant's file;
- (d) Sufficiently lighting the room in which the infant is sleeping to observe skin color;
 - (e) Monitoring breathing patterns of an infant;
 - (f) Allowing infants to follow their own sleep patterns;
- (g) Not allowing blankets, stuffed toys, pillows, crib bumpers, and similar items inside a crib, bassinet, or other equipment if occupied by a resting or sleeping infant;
- (h) Not allowing a blanket or any other item to cover or drape over an occupied crib, bassinet, or other equipment where infants commonly sleep;
- (i) Not allowing bedding or clothing to cover any portion of an infant's head or face while sleeping, and readjusting these items when necessary; and
- (j) Preventing infants from getting too warm while sleeping, which may be exhibited by indicators that include, but are not limited to, sweating; flushed, pale, or hot and dry skin, warm to the touch; a sudden rise in temperature; vomiting; refusing to drink, a depressed fontanelle; or irritability.
- (2) An early learning provider who receives notice of a safe sleep violation must:
- (a) Post the notice in the licensed space for two weeks or until the violation is corrected, whichever is longer, pursuant to WAC 110-300-0505; and
- (b) Within five business days of receiving notice of the violation, provide all parents and guardians of enrolled children with:

- (i) A letter describing the safe sleep violation; and
- (ii) Written information on safe sleep practices for infants.

- WAC 110-300-0315 Language modeling and reasoning. (1) An early learning provider must be aware of and responsive to children's developmental, linguistic, cultural, and academic needs.
- (2) An early learning provider must be aware of and responsive to children's needs by engaging in activities such as:
- (a) Asking developmentally appropriate questions for the age group and allow children to answer without interruption from the provider;
- (b) Circulating among the children during free choice activities and talking with children about what they are doing;
 - (c) Using teaching techniques such as:
- (i) Self-talk: When the provider talks about what ((he or she is)) they are doing, seeing, eating, touching, or thinking as ((he or she is)) they are involved in that activity;
- (ii) Parallel-talk: When the provider talks about what the child is doing, seeing, eating, or touching as the child is engaging in those activities; or
- (iii) Language expansion: When the provider adds detail or new words to build on ideas that children are expressing.
- (d) An early learning provider working with preschool and schoolage children must use language to develop and encourage reasoning skills by using techniques such as:
- (i) Talking about logical relationships or concepts during the day including, but not limited to, the daily schedule, the differences and similarities between objects, or people in the classroom;
- (ii) Introducing concepts using guiding questions that encourage children to figure out cause and effect relationships;
- (iii) Providing opportunities for reading and writing activities; and
- (iv) Asking open ended questions to help children improve skills and acquire knowledge.
- (e) An early learning provider working with non-English speaking children must encourage language development and acquisition by using techniques such as:
 - (i) Using words in various languages to talk about the routines;
 - (ii) Reading books out loud or using audio books; and
 - (iii) Playing games in different languages.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

- WAC 110-300-0345 Supervising children. (1) An early learning provider must only allow the following persons to have unsupervised access to a child in care:
 - (a) That child's own parent or guardian;
- (b) Licensees or early learning program staff authorized by the department in chapter 110-06 WAC;

- (c) A government representative including an emergency responder who has specific and verifiable authority for access, supported by documentation; and
- (d) A person authorized in writing or over the phone by that child's parent such as a family member, family friend, or the child's therapist or health care provider.
- (2) An early learning provider must meet capacity, group size, mixed age grouping, and staff-to-child ratios while children are in care. This includes, but is not limited to:
 - (a) Indoor and outdoor play activities;
 - (b) Off-site activities;
 - (c) During transportation;
 - (d) Meal times;
 - (e) Rest periods;
 - (f) Evening or overnight care; and
- (q) When children are on different floor levels of the early learning program.
- (3) An early learning provider must supervise children in care by:
- (a) Scanning the environment looking and listening for both verbal and nonverbal cues to anticipate problems and plan accordingly;
- (b) Visibly checking children on many occasions with little time in between;
- (c) Positioning ((him or herself)) themselves to supervise all areas accessible to children;
- (d) Attending to children and being aware of what children are doing at all times;
- (e) Being available and able to promptly assist or redirect a child as necessary; and
- (f) Considering the following when deciding whether increased supervision is needed:
 - (i) Ages of children;
 - (ii) Individual differences and abilities of children;
- (iii) Layout of the indoor and outdoor licensed space and play area;
- (iv) The risk associated with the activities children are engaged in; and
- (v) Any nearby hazards including those in the licensed or unlicensed space.
- (4) An early learning program staff member may undertake other activities for a temporary time period when not required to be providing active supervision required under subsection (5)(c) of this section. Such activities include, but are not limited to, cleaning up after an activity or preparing items for a new activity. This early learning staff member must remain in visual or auditory range, and be available and able to respond if needed.
 - (5) An early learning provider must:
- (a) Not use devices such as a baby monitors, video monitors, or mirrors in place of supervision, unless used pursuant to WAC 110-300-0270(5);
- (b) Be able to hear when doors in the immediate area are opened to prevent children from leaving unsupervised;
 - (c) Actively supervise children when the children:
 - (i) Interact with pets or animals;
 - (ii) Engage in water or sand play;
 - (iii) Play in an area in close proximity to a body of water;

- (iv) Use a safe route to access an outdoor play area not immediately adjacent to the early learning program;
 - (v) Engage in planned activities in the kitchen;
 - (vi) Ride on public transportation;
 - (vii) Engage in outdoor play; and
 - (viii) During field trips.
 - (d) Ensure no infant or child is left unattended during:
 - (i) Diapering;
 - (ii) Bottle feeding; or
 - (iii) Tummy time.
- (e) Provide developmentally appropriate supervision to children while bathing.

AMENDATORY SECTION (Amending WSR 19-14-076, filed 7/1/19, effective 8/1/19)

- WAC 110-300-0400 Application materials. (1) After completing a department orientation an applicant must submit a complete license application packet, pursuant to chapter 43.216 RCW. This requirement also applies to a change of ownership. A complete license application packet includes:
 - (a) Professional and background information about the applicant:
- (i) A completed department application form for the type of license being applied for (center or family home);
- (ii) A copy of the applicant's orientation certificate (orientation must be taken within ((twelve)) 12 months of license application);
- (iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;
 - (iv) Liability insurance, if applicable;
- (v) Certificate of incorporation, partnership agreement, or similar business organization document, if applicable;
 - (vi) The license fee;
 - (vii) A copy of current government issued photo identification;
- (viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;
- (ix) Employer identification number (EIN) if applicant plans to hire staff; and
- (x) Employment and education verification. For example, diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.
 - (b) Information about the facility to be licensed:
- (i) A floor plan, including use of proposed licensed and unlicensed space, with identified emergency exits and emergency exit pathways;
 - (ii) Certificate of occupancy, if applicable;
- (iii) Documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;
- (iv) E. coli bacteria and nitrate testing results for well water that is no more than ((twelve)) <u>12</u> months old, if applicable;
- (v) A lead or arsenic evaluation agreement for sites located in the Tacoma smelter plume (counties of King, Pierce, and Thurston); and (vi) Lead and copper test results for drinking water;

- (c) Program days and hours of operation, including closure dates and holiday observances; and
 - (d) Information about early learning program staff:
- (i) List of applicant and household members, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter 110-06 WAC; and
- (ii) Resume for applicant, center director, assistant director, program supervisor, and family home lead teacher, if applicable.
- (2) An applicant must include the following policy documents with the application, which will be reviewed by the department and returned to the applicant:
 - (a) Parent and program policies;
 - (b) Staff policies;
 - (c) An emergency preparedness plan; and
 - (d) Health policies.
- (3) An applicant must submit the completed application packet at least ((ninety)) 90 calendar days prior to the planned opening of the early learning program. The department will inspect the early learning program space and approve all application submissions required in this chapter prior to issuing a license:
- (a) The ((ninety)) <u>90</u> calendar days begins when the department receives a complete application packet.
- (b) Incomplete application packets will be returned to the applicant for completion.
- (c) An applicant who is unable to successfully complete the application and licensing process within ((ninety)) 90 days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within ((ninety)) 90 days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.
- (d) An applicant who is unable to meet the application requirements and has not withdrawn ((his or her)) their application will be denied a license, pursuant to RCW 43.216.325.

- WAC 110-300-0450 Parent or guardian handbook and related policies. (1) An early learning provider must supply to each parent or guardian written policies regarding the early learning program. Each enrolled child's record must have signed documentation stating the parent or guardian reviewed the handbook and early learning program policies.
- (2) An early learning provider must have and follow formal written policies in either paper or electronic format, including:
 - (a) A nondiscrimination statement;
 - (b) A family engagement and partnership communication plan;
- (c) A parent or guardian's permission for photography, videotaping, or surveillance of ((his or her)) their child;
- (d) Alcohol, tobacco, cannabis use and prohibition of illegal drugs;
- (e) Curriculum philosophy on how children learn and develop, and how this philosophy is implemented;

- (f) Child guidance plan, which includes restraint policies and forbidding corporal punishment;
 - (q) Expulsion policy;
- (h) Early learning program staff-to-child ratios and classroom types offered, if applicable;
- (i) If the early learning program offers any of the following, they must include a policy for each that applies to their program:
 - (i) Care for children with specific or special needs;
 - (ii) Infant and toddler care, covering:
 - (A) Diapering;
 - (B) Feeding;
 - (C) Toilet training;
 - (D) Child sleep pattern; and
 - (E) Safe sleep requirements.
 - (iii) Dual language learning;
- (iv) Religious and cultural activities, including how holidays will be celebrated;
 - (v) Transportation and off-site field trips;
 - (vi) Water activities;
 - (vii) Overnight care; and
 - (viii) How weapons on the premises are secured.
- (j) Program days and hours of operation, including closure dates and observed holidays;
 - (k) Enrollment and disenrollment requirements;
 - (1) Fees and payment plans;
 - (m) Sign-in and sign-out requirements;
 - (n) Information required for the child's record, including:
 - (i) The importance and plan for keeping the information current;
 - (ii) A plan to keep the child's information confidential; and
 - (iii) Who may legally access the child's information.
 - (o) A kindergarten transition plan, if applicable;
- (p) What parents or quardians must supply for their child (for example: Extra clothing or diapers);
- (q) Permission for a parent or guardian's access to areas of the early learning program during business hours;
 - (r) Termination of services policy;
 - (s) Emergency preparedness plan;
- (t) The early learning provider and program staff's duty to report incidents including reporting suspected child abuse, neglect, sexual abuse, or maltreatment;
- (u) Policies regarding mixed age groups, if applicable (including when children may be in a mixed age group);
- (v) Description of where the parent or quardian may find and review the early learning program's:
 - (i) Health policy;
 - (ii) Staff policies, if applicable;
 - (iii) Consistent care policy;
 - (iv) Menus;
 - (v) Liability insurance;
- (vi) Inspection reports and notices of enforcement actions, if applicable; and
 - (vii) Other relevant program policies.

OTS-5488.1

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-700-0040 What action must be taken if there is a belief that sexual misconduct by a ((JRA)) JR contractor has occurred? secretary requires the individual contractor, or employee of a contractor, when there is reasonable cause to believe ((he/she has)) the contractor or employee of the contractor had sexual intercourse or sexual contact with a ((JRA)) JR youth, to be immediately removed from access to any ((JRA)) <u>JR</u> youth, and follow reporting requirements in chapter 26.44 RCW, ((Reporting abuse and neglect of a child)) Abuse of children.

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

- WAC 110-700-0045 What action is required if there is evidence that sexual misconduct by a ((JRA)) JR contractor has occurred? If there is a preponderance of evidence that sexual intercourse or sexual contact between a ((JRA)) JR contractor and a ((JRA)) JR youth occurred, the secretary must inform the contractor that the individual employee is disqualified from employment with a contractor in any position with access to ((JRA)) JR youth.
- (2) A contract with a contractor who has had an employee who has been disqualified for employment based on a preponderance of evidence that ((he or she has)) they had sexual intercourse or sexual contact with a ((JRA)) JR youth, must not be renewed until the secretary determines that significant progress has been made by the contractor to reduce the likelihood that any of its employees or subcontractors have sexual intercourse or sexual contact with a ((JRA)) JR youth.

OTS-5489.1

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-710-0005 Definitions. "Administration" means activities and costs necessary for management and support of a consolidated juvenile services program.

"Application" means the document requesting state funds for spe-

cific projects under the consolidated juvenile services program.

"Community input" means information received from local entities which must include, unless impracticable: Providers, judges, law enforcement, juvenile court staff, social service agencies, schools, tribes, organizations representing communities of color, as well as other persons with an interest in juvenile justice. An existing advisory group, committee, or public forum may be used to gather input provided such groups include representation from the entities listed above.

"Director" means the director of the division of community programs/juvenile rehabilitation ((administration or his or her)) or designee.

"Division" means the division of community programs of the juvenile rehabilitation ((administration)).

"Outcome" means specific changes in the lives of youth and families which lead to a decrease in recidivism.

"Participating county" means a county or counties applying under this chapter.

"Program administrator" or "administrator" means the person designated to administer the consolidated juvenile services program in the juvenile court.

"Project" means a specific intervention or program performed as a part of consolidated juvenile services.

"Project supervisor" or "supervisor" means a person designated to supervise a project or projects in the consolidated juvenile services program.

"Regional administrator" means the regional administrator or designee of one of the division's six administrative regions ((, or his or her designee)).

OTS-5490.4

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-740-0010 Definitions. "Department" means the department of ((social and health services)) children, youth, and families.

"Active parole" means all time served by a ((JRA)) JR youth under ((JRA)) JR parole supervision except that time during which the offender is:

 $((\frac{1}{1}))$ <u>(a)</u> Under a $(\frac{1}{1})$ <u>JR</u> warrant;

 $((\frac{(2)}{(2)}))$ (b) Held in detention within or outside the state of Washington pending a parole revocation hearing, pending charges or pending a civil commitment hearing under chapter 71.09 RCW;

(((3))) (c) Serving a term of confinement for a parole revocation;

 $((\frac{4}{1}))$ (d) Placed on $((\frac{1}{1})$ (d) Placed on $(\frac{1}{1})$ (d) Placed on $(\frac{1}{1})$ suant to RCW 13.40.050;

((+5))) <u>(e)</u> Placed on unauthorized leave status;

 $((\frac{(6)}{(6)}))$ (f) Committed involuntarily for mental health or chemical dependency treatment; or

 $((\frac{7}{1}))$ (q) On temporary assignment status to a county juvenile detention center, a county jail, or to a department of corrections facility.

If no other time is concurrently tolled against active parole per $((\frac{1)}{1})$ through $(\frac{7}{1})$) (a) through $(\frac{7}{1})$ above, one additional day is tolled against active parole when the offender is subject to:

• A parole revocation initiated by the ((JRA)) JR.

• A ((seventy-two)) 72 hour hold in a ((JRA)) JR facility pending a parole revocation hearing.

"Confinement" means electronic monitoring of a juvenile or physical custody of a juvenile:

- By the department of ((social and health services)) children, youth, and families in a facility operated by or pursuant to a contract with the juvenile rehabilitation ((administration));
- In a county detention facility as defined in RCW 13.40.020 or in a county jail;
- In a facility operated by the department of corrections under provisions of RCW 13.40.280 or 13.40.285; or
- In another state under terms of chapter 13.24 RCW and of the interstate compact to which the state of Washington is a party.

"Detention" means, for purposes of this rule, temporary confinement of a juvenile pending charges, court disposition or administrative hearing.

"Juvenile parole officer" means a state employee, or person under contract to the state, whose responsibilities include supervising juvenile parolees.

"Juvenile parolee" means a person under age ((twenty-one)) 21 released from a juvenile rehabilitation ((administration)) residential facility and placed under the supervision of a juvenile parole officer.

"Modification of parole conditions" means a change in the "order of parole conditions" provided by the juvenile parole officer with full knowledge of the change by the juvenile parolee.

"Parole" means a period of supervision following release from a juvenile rehabilitation ((administration)) residential facility, during which time certain parole conditions are to be followed.

"Parole conditions" mean interventions or expectations that include, but are not limited to, those listed in RCW 13.40.210, intended to facilitate the juvenile parolee's reintegration into the community and/or to reduce the likelihood of reoffending.

"Secretary" means secretary or designee of the department of ((social and health services or his/her designee)) children, youth, and families.

"Violation" means behavior by a juvenile parolee contrary to written parole conditions which may result in sanctions that include, but are not limited to, modification of parole conditions and/or confinement.

"Target victim population" means persons who, by age, sex, race, ethnicity, body conformation or coloration or other personal characteristics are consistent with those of a ((JRA)) JR youth's known victim(s).

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

- WAC 110-740-0040 Parole revocation petition. (1) The juvenile parole officer:
- (a) Must initiate a parole revocation petition if the juvenile parole officer has reason to believe the juvenile parolee possessed a firearm or used a deadly weapon during the parole period; or
- (b) May initiate a parole revocation petition if the juvenile parole officer has reason to believe the juvenile parolee has violated a condition of parole, other than possession of a firearm or use of a deadly weapon. Criteria in WAC ((388-740-0070)) 110-740-0070 (2), (3), (4) and (5) are assessed by the juvenile parole officer to determine

the type of revocation and duration of confinement for which to petition.

- (2) The petition, on department forms, must include:
- (a) A statement of the nature of the violation and the date it occurred;
- (b) The relief requested by the juvenile parole officer as a result of the violation;
- (c) Notice of the juvenile parolee's right to be represented by an attorney, either one of ((his/her)) their own choosing or one appointed at public expense;
 - (d) A parole revocation hearing waiver agreement;
- (e) The dated signature of the regional administrator or desig-
- (f) If the parole revocation hearing is not waived, notice of the time, date, and location of the parole revocation hearing and notice that failure to appear may result in default.
- (3) An initial copy of the petition that includes the information described in subsection (2)(a) through (e) of this section must:
- (a) Be provided to the juvenile parolee or the juvenile parolee's attornev; and
- (b) Be provided to the juvenile parolee's parent/quardian, if reasonably possible, and in accordance with laws and rules governing the release of confidential information. The juvenile parole officer must document the date and time ((he/she)) they provided the initial copy of the petition to the juvenile parolee or the juvenile parolee's attorney.
- (4) A juvenile parolee, only through an attorney, may waive the right to a parole revocation hearing and agree to the parole revocation and agreed upon relief. The decision to waive must be documented with dated signatures on the original petition.
- (5) If the juvenile parolee through ((his/her)) their attorney does not waive the right to a hearing, the parole revocation petition must be filed with the local office of the state office of administrative hearings within ((seventy-two)) 72 hours (excluding Saturdays, Sundays, and holidays) of:
- (a) The juvenile parolee being placed in detention for an alleged violation of parole conditions; or
- (b) The juvenile parolee or ((his/her)) their attorney being provided with a copy of the petition under subsection (3) of this section if the juvenile parolee is not detained.
- (6) The filed petition must include notice that failure to appear may result in default, and the time, date, and location of the parole revocation hearing, as determined by the state office of administrative hearings. A copy of the filed petition must:
- (a) Be served either personally or by certified mail, return receipt requested, on the juvenile parolee or the juvenile parolee's attorney; and
- (b) Be provided to the juvenile parolee's parent/guardian, if reasonably possible, and in accordance with laws and rules governing the release of confidential information.

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

- WAC 110-740-0060 Parole revocation hearing. (1) After the petition is filed a parole revocation hearing must be held to determine whether the alleged parole violation occurred unless the juvenile parolee waives ((his/her)) their right to a parole revocation hearing. If the juvenile parolee is held in detention as described under WAC ((275-30-030)) 110-740-0030, the administrative law judge must hold the hearing within ((seventy-two)) 72 hours (excluding Saturdays, Sundays, and holidays) of the petition being served. Otherwise the administrative law judge must hold a hearing no sooner than seven days after the petition is served, but no later than ((fourteen)) 14 days after the petition is served.
- (2) At the parole revocation hearing, the juvenile may waive the right to be represented by an attorney. A juvenile waiving the right to an attorney may either contest or agree to the parole revocation.
 - (3) The administrative law judge must:
- (a) Conduct a parole revocation hearing in accordance with chapter 10-08 WAC except as otherwise indicated in these rules;
- (b) Grant the parole revocation petition if the administrative law judge finds, by a preponderance of the evidence, the violation occurred and the violation warrants revocation;
- (c) Order the relief requested in the petition, if the parole revocation petition is granted;
- (d) Issue an oral decision immediately following the parole revocation hearing;
- (e) Issue a written decision within ((forty-eight)) 48 hours of the hearing; and
- (f) Provide a copy of the decision to the juvenile parole officer, the juvenile parolee and ((his/her)) their attorney, the juvenile parolee's parent/quardian, and the department. The administrative law judge's decision shall constitute a final administrative decision.

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-740-0070 Confinement. (1) Mandatory confinement.

- A ((JRA)) <u>JR</u> youth must be confined for a minimum of ((thirty))30 days for possession of a firearm or use of a deadly weapon while on parole, per RCW 13.40.210 (4)(c).
 - (2) Confinement for up to ((thirty)) 30 days.
- A ((JRA)) JR youth may be confined for a period not to exceed ((thirty)) 30 days for violating one or more conditions of parole, per RCW 13.40.210 (4)(a)(i) through (iv).
 - (3) Confinement for remainder of sentence.
- As provided for in RCW 13.40.210 (4)(a)(v) and (vi), certain ((JRA)) JR youth who are placed on parole before completing their maximum sentence may be returned to confinement for the remainder of their sentence if they violate conditions of parole.
- (a) Sex offenders: A ((JRA)) JR youth may be returned to confinement for the remainder of the sentence range if the offense for which the youth was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first

degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined under RCW 9.94A.030.

- (i) The remainder of sentence is calculated as the maximum aggregated term of qualifying sex offenses, minus the number of days served on the aggregated sentence for the qualifying sex offense or offenses.
- (ii) Previous days in confinement for a parole violation are not deducted in this calculation.
- (iii) Aggregated terms are served such that any term or terms for qualifying sex offenses are considered the last served.
- (b) Graduates of basic training camp: A ((JRA)) JR youth who has successfully completed the juvenile offender basic training camp program under RCW 13.40.320 may be returned to confinement for the remainder of their sentence range.
- (i) The remainder of sentence is calculated as the maximum aggregated term or ((four hundred fifty-five)) 455 days, whichever is shorter, minus the number of days served on their aggregated sentence and on active parole.
- (ii) Previous days in confinement for a parole violation are not deducted in this calculation.
- (4) Juvenile sex offender confinement for up to ((twenty-four)) 24 weeks.
- (a) As provided for in RCW 13.40.210 (4)(b), a ((JRA)) <u>JR</u> youth may be returned to confinement for up to ((twenty-four)) 24 weeks if:
- (i) The ((JRA)) <u>JR</u> youth was sentenced for a sex offense as defined in RCW 9A.44.130;
- (ii) The ((JRA)) <u>JR</u> youth is known to have violated the terms of parole; and
- (iii) In the determination of the secretary, other graduated sanctions or interventions have not been effective in controlling the youth's parole violations; or
- (iv) The behavior is so egregious it warrants the use of the higher level intervention and the violation:
- (A) Is a known pattern of behavior consistent with a previous sex offense that puts the ((JRA)) JR youth at high risk for reoffending sexually;
- (B) Consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or
- (C) Requires a review under chapter 71.09 RCW, due to a recent overt act.
- (b) The total number of days of confinement under this subsection (4) shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying sex offense or offenses pursuant to RCW 13.40.0357.
- (c) The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing and impose consecutive ((twenty-four)) 24-week periods of confinement for each parole violation under this subsection (4).
 - (5) Criteria for juvenile sex offender confinement.
- A parole revocation petition to confine a juvenile sex offender for the remainder of sentence under subsection (3) of this section or for up to ((twenty-four)) 24 weeks under subsection (4) of this section will be based on, but not limited to, the following behavioral and sentence considerations:
 - (a) Behavioral criteria:
- (i) Behavior that appears to constitute a new sex offense or a statement by the ((JRA)) <u>JR</u> youth reporting a new sex offense;

- (ii) Statements by the $((\frac{JRA}{}))$ <u>JR</u> youth that $(\frac{he}{she}$ is at)) <u>in-</u> dicate an imminent risk to re-offend sexually unless confined;
 - (iii) Accessing, making or possessing child pornography;
- (iv) Accessing, making or possessing pornography that depicts excessive physical violence, death or threats of death, torture or infliction of pain, use of a weapon, humiliation or bondage;
- (v) Possession of materials which, in total, constitute a "rape
- (vi) Unsupervised contact with previous victim(s) or target victim populations, except for approved peer age contact (attending school, etc.);
- (vii) Use, possession or providing of drugs and/or alcohol associated with the ((JRA)) <u>JR</u> youth's illegal sexualized behaviors.
 - (b) Available remainder of sentence range.
- If the ((JRA)) <u>JR</u> youth has not served the maximum sentence imposed for the underlying offense or offenses, and confinement under WAC ((388-740-0070)) 110-740-0070 (3) or (4) are both available, the petition for relief will take into account whether the remainder of sentence is sufficient to accomplish the purposes of the revocation. If so, the petition will be for confinement for the remainder of the sentence range; if not, the petition will be for up to ((twenty-four)) 24 weeks of confinement.
- (6) If the ((JRA)) <u>JR</u> youth's parole is revoked, the department must give the youth credit against any period of confinement for days served in detention pending the parole revocation hearing.
 - (7) Serving confinement.
- (a) The ((JRA)) JR youth must serve ((his or her)) their confinement in a facility or detention facility as described in WAC ((388-740-0010)) 110-740-0010.
- (b) Confinement may be continuous, or for a portion of each day, or for certain days each week with the balance of time under supervision.
- (8) If a juvenile's parole is revoked two or more times during one parole period, the secretary must approve any period of confinement exceeding a combined total of ((thirty)) 30 days.
- (9) Unless conditions of parole are otherwise amended, the order of parole conditions in effect at the time the parole was revoked shall be deemed reinstated immediately following any period of confinement.

Washington State Register, Issue 24-19

WSR 24-19-076 PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration) [Filed September 17, 2024, 8:33 a.m., effective January 1, 2025]

Effective Date of Rule: January 1, 2025.

Purpose: The department of social and health services is adopting amendments to WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? Effective January 1, 2025, these amendments implement HB 2415 (chapter 154, Laws of 2024) and increase the maximum diversion cash assistance payment from \$1,250 to \$2,000.

Citation of Rules Affected by this Order: Amending WAC 388-432-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.660, 74.08.090, 74.08A.210, 74.08A.230.

Other Authority: HB 2415 (chapter 154, Laws of 2024).

Adopted under notice filed as WSR 4-16-121 on August 6, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0. Date Adopted: September 17, 2024.

> Katherine I. Vasquez Rules Coordinator

SHS-5043.2

AMENDATORY SECTION (Amending WSR 21-21-065, filed 10/18/21, effective 11/18/21)

WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? The department of social and health services (DSHS) has a program called diversion cash assistance (DCA). If your family needs an emergency cash payment but does not need ongoing monthly cash assistance, you may be eligible for this program.

- (1) To get DCA, you must:
- (a) Meet all the eligibility rules for temporary assistance for needy families (TANF) WAC 388-400-0005 or $((\neq))$ state family assistance (SFA) per WAC 388-400-0010. (($\frac{1}{7}$ and once)) If DSHS finds you el-

igible, you are not required to fulfill the following TANF-related requirements:

- (i) Participation in WorkFirst as defined in chapter 388-310 WAC; and
- (ii) Assignment of child support rights or cooperation with the division of child support as defined in chapter 388-422 WAC;
- (b) Have a current bona fide or approved need for living expenses;
 - (c) Provide proof that your need for DCA exists; and
- (d) Have or expect to get enough income or resources to support you and your family for at least ((twelve)) 12 months.
- (2) You may get DCA to help pay for one or more of the following
 - (a) Child care;
 - (b) Housing;
 - (c) Transportation;
 - (d) Expenses to get or keep a job;
- (e) Food costs, but not if an adult member of your family has been disqualified ((for food stamps)) from Washington's basic food
- (f) Medical costs, except when an adult member of your family is not eligible because (($\frac{he - or - she}{he}$)) \underline{they} failed to provide third party liability (TPL) information as defined in WAC 182-503-0540.
 - (3) DCA payments are limited to:
- (a) ((One)) Two thousand ((two hundred fifty)) dollars once in a ((twelve)) <u>12</u>-month period that starts with the month DCA benefits begin; and
 - (b) The cost of your need.
- (4) (($\overline{\text{We do}}$)) $\underline{\text{DSHS does}}$ not budget your income or make you use your resources to lower the amount of DCA payments you can receive.
 - (5) DSHS may make DCA payments:
 - (a) All at once; or
- (b) As separate payments over a ((thirty)) 30-day period that starts on the date of your first DCA payment.
- (6) ((We)) DSHS will pay your DCA benefit directly to the service provider when possible.
- (7) You are not eligible for DCA if one or more of the following applies:
- (a) Any adult member of your assistance unit got DCA within the last ((twelve)) 12 months;
- (b) Any adult member of your assistance unit gets TANF/SFA currently;
- (c) Any adult member of your assistance unit is not eligible for cash assistance for any reason unless one parent in a two-parent-assistance unit currently receives ((SSI)) Social Security Income (SSI);
- (d) Your assistance unit does not have a needy adult, such as when you do not receive TANF/SFA for yourself but for your children only;
- (e) Any adult member of your assistance unit is not eligible for cash assistance for any one of the following sanctions:
- (i) TANF/SFA closure because of a noncompliance sanction (NCS) termination;
- (ii) TANF/SFA closure while in WorkFirst sanction on or after July 1, 2021; or
 - (iii) Noncooperation with division of child support.
- (8) If you apply for DCA after your TANF/SFA grant is terminated, ((we consider)) DSHS considers you an applicant for DCA.

- (9) If you apply for TANF/SFA and you received DCA less than ((twelve)) 12 months ago, ((we set)) DSHS sets up a DCA loan:
- (a) The amount of the DCA loan is ((one-twelfth)) 1/12th of the total DCA benefit times the number of months that are left in the ((twelve)) 12-month period;
- (b) The first month begins with the month your DCA benefits began; and
- (c) ((We)) DSHS will collect the loan only by reducing your TANF/SFA grant by ((five percent)) 5% each month.
- (10) If you stop getting TANF/SFA before you have repaid your DCA loan, ((we)) <u>DSHS</u> will stop collecting the loan unless you get back on TANF/SFA.

Washington State Register, Issue 24-19

WSR 24-19-079 PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration) [Filed September 17, 2024, 9:06 a.m., effective October 18, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of social and health services is adopting amendments to WAC 388-310-0800 WorkFirst—Support services. These amendments expand access to support services to assist with housing and utility needs for WorkFirst families. Funding for this purpose is supported within the operating budget and WorkFirst spending plan for state fiscal year 2025. Additionally, these amendments increase support service flexibility by removing particular restrictions.

Related emergency rules are currently in place. When effective, this permanent filing supersedes the emergency rule filed under WSR 24-14-046.

Citation of Rules Affected by this Order: Amending WAC 388-310-0800.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 74.08A.250.

Adopted under notice filed as WSR 24-15-062 on July 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0. Date Adopted: September 17, 2024.

> Katherine I. Vasquez Rules Coordinator

SHS-5042.3

AMENDATORY SECTION (Amending WSR 22-20-016, filed 9/22/22, effective 10/23/22)

WAC 388-310-0800 WorkFirst—Support services. (1) Who can get support services?

People who can get support services include:

- (a) WorkFirst participants who receive a TANF cash grant;
- (b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);

- (c) TANF/SFA applicants as needed to meet the WorkFirst orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);
- (d) Unmarried or pregnant minors who are income eligible to receive TANF and are:
- (i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or
- (ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement or meeting the school requirements.
- (e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.
- (f) Former WorkFirst participants who are working at least 15 hours per week or more, for up to three months after leaving TANF if they need employment-related transportation support services to meet a temporary need or emergency.
 - (2) Why do I receive support services?

Although not an entitlement, you may receive support services for the following reasons:

- (a) To help you participate in work and WorkFirst activities that lead to independence.
- (b) To help you to participate in job search, accept a job, keep working, advance in your job, or increase your wages.
- (c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 110-15 WAC describes the rules for this child care assistance program.)
- (3) What type of support services may I receive and what limits apply?

There is a limit of \$5,000 per person per program year (July 1st to June 30th) for WorkFirst support services you may receive.

The chart below shows the <u>potential</u> types of support services that are available ((for the different activities (as indicated by an "x") and the restrictions that apply.

Definitions:

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.
- •• Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.
- ••• Some support services are available if you need them for other required activities in your IRP)).

Type of Support Service	Restrictions	((• Work))	((•• Safety))	((••• Other))
Reasonable accommodation for employment		((x		
Clothing/uniforms		((x		
Diapers		((x	X	*))
Haircut		((x		
((Lunch	Same rate as established by OFM for state employees	*))		
Personal hygiene		((x	X	*))
Professional, trade, association, union, and bonds		((x		*))

Type of Support Service	Restrictions	((• Work))	((•• Safety))	((••• Other))
Relocation related to employment or safety (can include rent, housing, and deposits)		((x	*))	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	((x		
Tools/equipment		((x	*	*))
Car repair needed to restore car to operable condition		((x	X	*))
License/fees		((x	*	*))
Mileage reimbursement	Same rate as established by OFM for state employees	((x	X	*))
Transportation allotment, including fuel support		((x	X	*))
Counseling		((x	×	*))
Educational expenses		((x	*	*))
Medical exams (not covered by medicaid)		((x	X	*))
Public transportation		((x	×	*))
Testing-diagnostic		((x	X	*))
Housing and utilities	Funding allocated for ((07/01/2022)) 07/01/2024 - ((06/30/2023)) 06/30/2025 only	((x	×	*))

- (4) What are the other requirements to receive support services? Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:
 - (a) It is within available funds; and
 - (b) It does not assist, promote, or deter religious activity; and
 - (c) There is no other way to meet the cost.
- (5) What happens to my support services if I do not participate as required?

The department will give you 10 days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

Washington State Register, Issue 24-19 WSR 24-19-092

WSR 24-19-092 PERMANENT RULES GAMBLING COMMISSION

[Filed September 17, 2024, 12:50 p.m., effective October 18, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule change aims to align all organizational license expiration dates to June 30th of each calendar year. This rule change will aid in revenue forecasting as well as simplify implementation and communication to licensees when adjusting license fees in the future.

Citation of Rules Affected by this Order: New WAC 230-03-002 and 230-05-177; and amending WAC 230-05-128 and 230-05-136.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 24-15-061 on July 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0. Date Adopted: September 12, 2024.

> Adam Amorine Legal and Records Manager

OTS-5613.1

NEW SECTION

- WAC 230-03-002 Expiration date for organizational licenses. (1) As used in this section, "organization" means a charitable or nonprofit organization holding one or more licenses listed in WAC 230-05-160, a commercial stimulant organization holding one or more licenses listed in WAC 230-05-165, and other businesses holding one or more licenses listed in WAC 230-05-170.
- (2) Regardless of date of approval, all organization licenses expire June 30th of each calendar year.

OTS-5624.1

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

- WAC 230-05-128 Renew your license in a timely manner. (1) You must renew online, unless you have received a waiver as outlined in this chapter and allow enough time to:
- (a) Print the license prior to midnight before the license expires; or
- (b) Have us print the license and mail it to you so you receive it before your license expires.
- (2) If you have a waiver and are not renewing your license online, you must ensure a properly completed renewal application and all applicable license fees are received at our administrative office in Lacey at least ((fifteen)) 30 days before the expiration date on the license.
- (3) If you do not submit a properly completed renewal application and all fees and your license expires, you must immediately stop the gambling activity covered by your license.
- (4) If your license expires, you must submit an application and you must not operate any gambling activity until a new license is issued.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

- WAC 230-05-136 Prorating or refunding fees. (1) ((We may prorate organization license fees when we adjust expiration dates to schedule our workload.
- (2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust license expiration dates under this provision, we may prorate the required fees.
 - (3))) We will not prorate or refund fees when:
 - (a) You discontinue your gambling activities; or
 - (b) You voluntarily surrender your license or permit; or(c) We suspend or revoke your license.
- $((\frac{4}{1}))$ <u>(2)</u> We keep a portion of your application or license fees for processing costs when:
 - (a) We deny or administratively close your application; or
 - (b) You withdraw your application; or
 - (c) You overpaid us; or
 - (d) We received duplicate license fees.

OTS-5614.1

NEW SECTION

WAC 230-05-177 Temporary reduction of base license fees. (1) As used in this section, "organization" means a charitable or nonprofit organization holding one or more licenses listed in WAC 230-05-160, a commercial stimulant organization holding one or more licenses listed

in WAC 230-05-165, and other businesses holding one or more licenses listed in WAC 230-05-170.

(2) For organizations renewing their license with a license effective date between October 1, 2024, and April 1, 2025, the base license fee will be prorated as follows:

License effective date	Base license fee reduction
October 1, 2024	25 percent
January 1, 2025	50 percent
April 1, 2025	75 percent

- (3) Organizations that renewed before the effective date of this rule will receive a refund of 25 percent of the base fee paid. All other organizations renewing will pay a reduced base fee amount.

 (4) This rule is only effective through June 30, 2025.

WSR 24-19-094 PERMANENT RULES OFFICE OF THE

INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2024-04—Filed September 17, 2024, 1:57 p.m., effective October 18, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of the insurance commissioner (commissioner) is adopting rules to add a new section to chapter 284-18 WAC. The new rules will fully implement SB 6027 (chapter 42, Laws of 2024) by clarifying: (1) When a holding company system may be exempt from filing the annual group capital calculation or allowed to make a limited filing; (2) the circumstances under which the commissioner can require a previously exempted holding company system to file an annual group capital calculation; and (3) which non-U.S. jurisdictions are considered to accept the group capital calculation.

Citation of Rules Affected by this Order: New WAC 284-18-447.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a),

48.31B.025 (2)(h), (4), (10), and (13)(c), and 48.31B.040.
Adopted under notice filed as WSR 24-16-117 on August 5, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0. Date Adopted: September 17, 2024.

> Mike Kreidler Insurance Commissioner

OTS-5429.3

NEW SECTION

- WAC 284-18-447 Group capital calculation. (1) Group capital calculation. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:
- (a) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;

- (b) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- (c) Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
- (d) The holding company system attests that there are no material changes in the transactions between insurers and noninsurers in the group that have occurred since the last filing of the annual group capital; and
- (e) The noninsurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.
- (2) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if: The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and all of the following additional criteria are met:
- (a) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- (b) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and
- (c) The holding company system attests that there are no material changes in transactions between insurers and noninsurers in the group that have occurred since the last filing of the report to the lead state commissioner and the noninsurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.
- (3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subsection (1) or (2) of this regulation, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:
- (a) Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in RCW 48.05.430 through 48.05.455, or 48.43.300 through 48.43.325 or a similar standard for a non-U.S. insurer; or
- (b) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in WAC 284-16-300 through 284-16-320;
- (c) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.
- (4) A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if it satisfies the following criteria:
 - (a) With respect to RCW 48.31B.025 (13)(a)(iv):

- (i) The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or
- (ii) Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in subsection (4)(a)(i) of this regulation.
- (b) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.
- (5) A list of non-U.S. jurisdictions that recognize and accept the group capital calculation will be published through the NAIC Committee Process:
- (a) A list of jurisdictions that recognize and accept the group capital calculation pursuant to RCW 48.31B.025 (13)(a)(iv), is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under RCW 48.31B.025 (13)(a)(iv). To assist with a determination under RCW 48.31B.025 (13)(b), the list will also identify whether a jurisdiction that is exempted under either RCW $48.31B.0\overline{2}5$ (13) (a) (iii) or (iv) requires a group capital filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction.
- (b) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subsection (4)(a)(ii) of this regulation will serve as support for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.
- (c) If the lead state commissioner makes a determination pursuant to RCW 48.31B.025 (13)(a)(iv) that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.
- (d) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that recognizes and accepts the group capital calculation.

Washington State Register, Issue 24-19

WSR 24-19-101 PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration) [Filed September 18, 2024, 10:13 a.m., effective October 19, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The developmental disabilities administration (DDA) amended these rules to allow DDA-contracted entities to provide intensive habilitation services for children and to standardize provider and facility requirements across provider types.

Citation of Rules Affected by this Order: New WAC 388-833-0016, 388-833-0017, 388-833-0019, 388-833-0024, 388-833-0031, 388-833-0032, 388-833-0033, 388-833-0034, 388-833-0035, 388-833-0036, 388-833-0037, 388-833-0038, 388-833-0040, 388-833-0041 and 388-833-0053; repealing WAC 388-833-0030 and 388-833-006; and amending WAC 388-833-0005, 388-833-0010, 388-833-0015, 388-833-0020, 388-833-0025, 388-833-0045, 388-833-0050, and 388-833-0055.

Statutory Authority for Adoption: RCW 71A.12.030. Other Authority: RCW 71A.12.010 and 71A.12.120.

Adopted under notice filed as WSR 24-15-001 on July 3, 2024.

Changes Other than Editing from Proposed to Adopted Version: DDA is not adopting proposed new WAC 388-833-0018.

DDA modified proposed WAC 388-833-0019 to remove reference to chapter 388-825A WAC and clarified that only state-operated providers are required to be certified.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 15, Amended 8, Repealed 2. Date Adopted: September 18, 2024.

> Lisa N. H. Yanagida Chief of Staff

SHS-5032.4

Chapter 388-833 WAC INTENSIVE HABILITATION SERVICES FOR CHILDREN PROGRAM

DEFINITIONS

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

- WAC 388-833-0005 Definitions. (("Crisis" means a set of circumstances or events that:
- (1) Put a participant at risk of hospitalization, institutionalization, or loss of residence;
- (2) Exceeds a participant's individual ability to cope/remain stable; or
- (3) Exceeds the ability of the participant's caregivers to provide necessary supports.
- "Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and who has been determined eligible by DDA to receive services under chapter 388-823 WAC.
- "CRM ((/SW/SSS))" means the DDA case resource manager((, DDA social worker, or DDA social service specialist)) assigned to ((an individual or participant in the intensive habilitation services (IHS) for children program)) a client.
- (("Developmental disabilities administration" or)) "DDA" means the developmental disabilities administration within the department of social and health services.
- "Habilitative goals" means the family-identified goals intended to assist the client to acquire, retain, and improve upon self-help, socialization, and adaptive skills.
- "Habilitation" means support that assists people with developmental disabilities to acquire, retain, and improve upon the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.
- (("IHS review team" means DDA staff who review referrals to the IHS for children program.
- "Individual" means a person who has a developmental disability as defined in RCW 71A.10.020(5) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW. Other terms used in the field include "client" and "resident."
- "Participant" means the individual who is accessing the intensive habilitation services.
- "Participant team" means individuals who work together to provide formal and informal supports to a participant. A typical team includes IHS staff, the CRM/SW/SSS, the participant's family/legal representative(s), and service providers working with the participant.))
- "Individualized team" means the group of people who work together to provide formal and informal supports to a client. A typical team includes the client, the client's family and legal representative, intensive habilitation services (IHS) staff, the client's case resource manager, managed care organization care coordinators, and any other service providers working with the client and family.
- "Legal representative" means a parent of a client if the client is under age 18 and parental rights have not been terminated or revoked, a court-appointed quardian if a decision is within the scope of

the quardianship order, or any other person authorized by law to act for the client.

- "Parent" means a biological or adoptive parent with legal authority to make decisions on behalf of the client.
- "Primary caregiver" means the person who provides the majority of the client's care and supervision and lives with the client.
- "Provider" means the contracted or state-operated provider of intensive habilitation services.
- (("Regional clinical team" means DDA staff who may respond to crisis situations by providing assessment, training, behavior support and consultation as well as behavioral health stabilization services to DDA enrolled individuals.))

PURPOSE

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

WAC 388-833-0010 What is ((the purpose of the intensive habilitation services for children program)) required of an IHS provider? ((The purpose of the intensive habilitation services for children program is to provide short-term behavioral health supports to participants who are in crisis.))

- (1) A provider of the intensive habilitation services (IHS) for children program provides the following:
 - (a) The creation and implementation of a habilitative plan;
- (b) Opportunities for the client's family, natural supports, and community providers to participate in individualized team meetings, discuss effective environmental strategies, collaborate on techniques for implementing the client's habilitative plan; and
- (c) Medication administration and medication assistance as needed.
 - (2) IHS must provide the following to clients:
 - (a) Three meals per day plus snacks;
 - (b) Toiletries and personal care items;
 - (c) Bedding and towels;
 - (d) Access to laundry facilities;
 - (e) Access to a telephone;
 - (f) Opportunities for accessing the community; and
 - (q) Transportation to necessary appointments or services.

ELIGIBILITY

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

- WAC 388-833-0015 Who ((is)) may be eligible ((for the)) to receive stabilization services from an intensive habilitation services ((for children program)) provider? A person ((is)) may be eligible ((for the)) to receive stabilization services from an intensive habilitation services ((for children program)) provider if:
 - (1) The person is over age seven but under age 21;
- (2) The person is <u>DDA-</u>eligible ((for DDA services)) under chapter 388-823 WAC;
 - (((2) The person is eligible for medicaid services;
- (3) The person or their legal representative voluntarily consents to intensive habilitation services;
 - (4) The person is age eight or older but under age twenty-one;
- (5) The person has no pending investigations of abuse or neglect with the department of children, youth, and families; and
- (6) DDA determines the person needs the level of service provided in the intensive habilitation services for children program.))
- (3) The person is eligible for stabilization services under WAC 388-845-1100;
- (4) The person has received medically necessary inpatient treatment for conditions related to behavioral health or autism, if recommended by the person's treating professional, and does not have a treatment recommendation for a locked or secured facility;
- (5) The person's medication needs can be met through nurse delegation;
- (6) The provider determines under WAC 388-833-0016 that the provider can safely meet the person's needs and that the person does not pose a risk to the health or safety of themselves, IHS staff, or other clients supported by the provider;
- (7) The person does not require an intervention prohibited in the setting or that cannot be provided based on staffing levels and credentials; and
- (8) The person has an identified residential discharge setting to return to and the identified caregiver has agreed to participate in the IHS program requirements.

NEW SECTION

WAC 388-833-0016 How does the provider determine if they can safely meet a client's needs? To determine whether they can safely meet a client's needs, the intensive habilitation services provider reviews client information, such as:

- (1) The client's referral packet;
- (2) Information gathered from the client, collateral contacts, or case manager; and

(3) Composition of clients currently supported by the provider.

PROVIDER QUALIFICATIONS

NEW SECTION

WAC 388-833-0017 Who may become an intensive habilitation services provider? The following entities may become an intensive habilitation services provider:

- (1) A staffed residential home licensed under chapter 110-145 WAC; or
 - (2) A DDA-certified state-operated provider.

NEW SECTION

WAC 388-833-0019 Is a site visit required and what does DDA review during a site visit? (1) To be certified, a state-operated provider must participate in site visits.

- (2) During a site visit, DDA reviews the state-operated provider's service site for the following safety requirements:
 - (a) The common areas of the home are unrestricted.
 - (b) All entrances and exits are unblocked.
 - (c) The home is maintained in a safe and healthy manner.
- (d) The home has a storage area for flammable and combustible materials.
- (e) Every floor of the home has working smoke and carbon monoxide detectors.
- (f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and at least one on every floor of the home.
 - (g) The home has a stocked first-aid kit.
 - (h) The home has a working and accessible telephone.
- (i) The home has a working and accessible flashlight or alternative light source.
- (j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).
- (k) The contact information for the developmental disabilities ombuds is available and accessible in the home.
- (1) The water temperature at the home is 120 degrees Fahrenheit or less.
- (m) There is a safety plan for any body of water more than 24 inches deep at the home.
- (n) The home has an evacuation plan and an emergency food and water supply.
- (o) The home meets integrated setting requirements under WAC 388-823-1096.

(p) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

- WAC 388-833-0020 How long may a ((participant)) client receive ((services)) support from ((the)) a provider of intensive habilitation services ((for children program))? (1) The ((participant)) client may receive services from an IHS provider for a maximum of ((one hundred eighty)) 90 consecutive days per admission((, from the date of admission to the program)).
- (2) Length of admission is based on the client's progress toward their family-identified goals.
- (3) Upon discharge from the intensive habilitation services program, the legally responsible entity - parent, legal representative, or primary caregiver - must resume care for the client.

NEW SECTION

- WAC 388-833-0024 What training must a DDA-contracted provider complete? (1) To provide direct support to a client receiving services from a DDA-contracted provider, a direct support professional (DSP) must complete:
 - (a) Training required under chapter 110-145 WAC;
- (b) Training and continuing education required under chapter 388-829 WAC; and
- (c) Nurse delegation training if the DSP will be performing tasks requiring delegation under WAC 246-840-930.
- (2) The provider must ensure that each direct support professional stays current on their CPR certification, food worker card, and first aid and bloodborne pathogens trainings.

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

- WAC 388-833-0025 How does an individual access intensive habilitation services for children)) What training must a state-operated provider complete? ((The individual or family/legal representative may request intensive habilitation services for children through the CRM/SW/SSS.))
- (1) To provide direct support to a client receiving services from a state-operated provider, a direct support professional (DSP) must complete:
- (a) Training and continuing education required under chapter 388-829 WAC;
- (b) Nurse delegation training if the DSP is performing tasks requiring delegation under WAC 246-840-930.

(2) The provider must ensure that each DSP stays current on their CPR certification, food worker card, and first aid and bloodborne pathogens trainings.

HEALTH AND SAFETY

NEW SECTION

WAC 388-833-0031 What infection control practices must the provider implement? (1) The provider must have written policies and procedures about the control of infections. These must include, but are not limited to, the following areas:

- (a) Isolation of sick individuals;
- (b) Germ control procedures;
- (c) Hygiene, including hand washing, toileting, and laundering;
- (d) Prevention of the transmission of communicable diseases including management and reporting;
 - (e) First aid;
 - (f) Care of minor illnesses;
 - (g) Actions to be taken for medical emergencies; and
 - (h) General health practices.
- (2) The provider must promote personal hygiene to help prevent the spread of germs.
- (3) The provider must provide staff with the supplies necessary for limiting the spread of infections.
- (4) Staff with a reportable communicable disease or a notifiable disease condition in an infectious stage, as defined by the department of health in chapter 246-101 WAC, must not be on duty until they have a healthcare professional's approval for returning to work.

NEW SECTION

WAC 388-833-0032 How must the provider store medication? (1) The provider must store a client's medication:

- (a) In a locked container, such as a locked box;
- (b) Separate from food and toxic chemicals;
- (c) Under proper conditions for sanitation, temperature, and ventilation; and
- (d) In the original medication container with the pharmacist-prepared or manufacturer's label, which must include the:
 - (i) Name of the client for whom the medication is prescribed;
 - (ii) Name of the medication; and
 - (iii) Dosage and frequency.
- (2) The provider may store a client's medication in a medication organizer if the medication organizer was prepared by a pharmacist or registered nurse.

NEW SECTION

- WAC 388-833-0033 What must the provider do if a client refuses a prescribed medication? If a client refuses a prescribed medication, the provider must:
- (1) Document the refusal, including the time, date, and medication refused;
 - (2) Inform the client of the benefit of the medication;
- (3) Consult a pharmacist or licensed medical provider with prescription authority to determine if the medication refusal could significantly harm the client;
- (4) If recommended, continue to offer the medication following consultation in subsection (3) of this section; and
- (5) Inform the client's parent or legal representative of the refusal and any reasons for the refusal if shared by the client.

NEW SECTION

- WAC 388-833-0034 When must the provider dispose of medications?
- (1) The provider must dispose of all client medications that are discontinued, expired, or replaced by another medication in consultation with a pharmacist or other health professional.
- (2) When disposing a client's medication, the provider must list the:
 - (a) Client's name;
 - (b) Medication name;
 - (c) Amount disposed; and
 - (d) Date of disposal.
 - (3) Two people must verify the disposal by signature.

NEW SECTION

- WAC 388-833-0035 What must the provider do to prepare for emer**gencies?** (1) The provider must develop an emergency response plan.
- (2) The provider must complete a fire drill with clients at least once per month and document completion of the drill.

NEW SECTION

- WAC 388-833-0036 What water temperature safety measures must be met? (1) The provider must regulate the facility's water temperature no higher than 120 degrees Fahrenheit.
- (2) The provider must complete and document monthly water temperature checks.

NEW SECTION

WAC 388-833-0037 What safety requirements must be met? (1) The provider must be located in an area with public fire protection.

- (2) The provider must have working smoke and carbon monoxide detectors installed. Each smoke and carbon monoxide detector must address the needs of clients who are deaf or hard of hearing.
 - (3) Smoke detectors must:
- (a) Be in operating condition both inside and outside of all sleeping areas.
- (b) Be installed on each story of the facility, in all play areas, and in the basement.
- (c) Be installed and maintained according to the manufacturer's specifications.
- (d) If mounted on a wall, be 12 inches from the ceiling and a corner.
- (e) Be tested twice a year to ensure they are in working order. The provider must document the date and time of the test.
- (4) Carbon monoxide detectors must be located in or near each client's bedroom and on every floor of the facility.
- (5) The provider must have at least one approved 2A10BC-rated five pound or larger all-purpose (ABC) fire extinguisher readily available at all times. "Approved 2A10BC-rated" means a fire extinquisher with an underwriters laboratory label on the nameplate classifying the extinguisher as 2A10BC-rated or larger.
- (6) The provider must maintain and service fire extinguishers according to manufacturer's specifications.
- (7) An approved fire extinguisher must be located in the area of the normal path of exiting. The maximum travel distance to an extinguisher from any place on the premises must not exceed 75 feet. When the travel distance exceeds 75 feet, additional extinguisher(s) are required.
- (8) The provider must have at least one fire extinguisher on each floor of a multilevel facility.
 - (9) Fire extinguishers must:
- (a) Be mounted in a bracket or in a fire extinguisher cabinet so that the top of the extinguisher is no more than five feet above the floor; and
- (b) Receive an annual maintenance certification by a licensed firm specializing in this work, based on the manufacturer's recommended schedule. Maintenance means a thorough check of the extinguisher for:
 - (i) Mechanical parts;
 - (ii) Extinguishing agent; and
 - (iii) Expelling means.
- (10) New fire extinguishers do not need to receive an additional certification test during the first year.
- (11) The department may require that additional fire extinguishers be available on the premises, in consultation with the local fire authority or Washington State Patrol's Fire Protection Bureau.

NEW SECTION

- WAC 388-833-0038 Must the provider secure cleaning supplies and other potentially hazardous substances? (1) The provider must safely secure cleaning supplies, flammables and other combustible materials, toxic or poisonous substances, and aerosols.
- (2) If a container is filled with a toxic substance from a bulk supply, the provider must clearly label the container.

RECORDS

NEW SECTION

- WAC 388-833-0040 Must the provider keep a record of a client's property? (1) The provider must maintain a property record for each
- (2) The property record must include a descriptive list of the items the client possessed upon admission and discharge.

NEW SECTION

WAC 388-833-0041 What records must the provider keep and how long must the records be retained? (1) The provider must keep the following in the client's record:

- (a) Referral packet contents;
- (b) Service notes;
- (c) The client's habilitation plan; and
- (d) The client's behavior intervention plan, if applicable.
- (2) The provider must retain a client's records for at least six years after delivering services to the client.

RIGHTS AND RESPONSIBILITIES

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

WAC 388-833-0045 What are the ((expectations of family/legal representative)) rights and responsibilities of parents or legal representatives when their child is in the intensive habilitation services for children program? ((Family/legal representatives retain custody of their child at all times when the child is receiving services in the intensive habilitation services (IHS) for children program. Family/legal representative responsibilities include, but are not limited to, the following:))

- (1) Accessing intensive habilitation services (IHS) is voluntary and does not affect a parent's or legal representative's rights and responsibilities as a legal custodian for the child.
- (2) Before a client receives IHS, an IHS family agreement must be signed agreeing to:

- (((1))) <u>(a)</u> Maintain ((ongoing and regular)) <u>at least weekly</u> contact with their child;
- (((2) Agree to work cooperatively with their child's DDA CRM/SW/ SSS, and other DSHS staff and persons caring for the child;
- (3))) (b) Participate in ((decision making for the child)) the child's individualized team meetings and service planning;
- (c) Participate in weekly meetings about implementing strategies identified in the habilitation plan;
- (d) Work with IHS staff to transition the child back home or to another identified residential setting; and
 - (e) Arrange with IHS to maintain the child's school enrollment.
 - (3) An IHS family agreement must be signed by:
 - (a) The client's parent or the client's legal representative; or
- (b) The client's legal representative and primary caregiver if the client is the subject of court-ordered out-of-home care through a dependency action under RCW 13.34.060 or a tribal child welfare action.
- ((4) The right to make all nonemergency decisions about medical care, enlistment in military service, marriage and other important legal decisions for the person under eighteen years of age; and
- (5) Agree that if their child's IHS placement disrupts, their child will return to the parents physical care until a new placement is developed.))

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

WAC 388-833-0050 ((Who pays for the participant's care when they are)) What are the financial responsibilities of parents or legal representatives when their child is in the intensive habilitation services for children program? ((A combination of state and federal funds cover the cost of the participant's care while in the intensive habilitation services for children program. The family/legal representative is encouraged to support the participant with typical items or activities, e.g., presents, clothing, special items, special outings which are not supported by state or federal funds.))

A parent or legal representative remains financially responsible for all expenses for their child that the provider is not required to provide under this chapter or the provider's contract.

NEW SECTION

WAC 388-833-0053 May the provider decide to stop providing services to a client and to whom must notice be sent? (1) The provider may decide to stop providing services if the provider determines and documents that the client's behavior jeopardizes:

- (a) The client's health or safety; or
- (b) The health or safety of staff or other clients the provider supports.
 - (2) The notice of the provider's decision must include:
 - (a) The reason for the decision; and
 - (b) The effective date of the decision.

- (3) At least 72 hours before the effective date of the decision, the provider must notify:
 - (a) The client;
 - (b) The client's parent or legal representative;
 - (c) The client's DDA case manager; and
 - (d) The IHS program manager.

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

- WAC 388-833-0055 What are a client's appeal rights ((do I have))? (1) ((You have the right to)) A client, the client's parent, or the client's legal representative may appeal decisions made by DDA in accordance with WAC 388-825-120 through 388-825-165 and WAC 388-845-4000 through 388-845-4015.
- (2) A client, the client's parent, or the client's legal representative does not have a right to appeal a decision for admission to the intensive habilitation services program.
- (3) A client does not have a right to appeal a provider's decision to terminate support to the client.
- $((\frac{(2)}{(2)}))$ Once the $(\frac{(2)}{(2)})$ Once the $(\frac{(2)}{(2)})$ reached)) client has received services for the maximum of 90 days, the intensive habilitation services (IHS) ((have been completed and terminating the service and returning the participant to another residential placement is not considered a termination, denial, or move to a different type of residential service as described in WAC 388-825-120)) are complete. The client, the client's parent, or the client's legal representative does not have a right to appeal the service end date.
- (((3) A participant may appeal eligibility for the IHS program but participation in the program is determined by WAC 388-833-0030 and is dependent on bed and funding availability. There is no appeal right to an IHS participation determination.))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-833-0030	How is a decision made for participation in the intensive habilitation services for children program?
WAC 388-833-0060	Does DDA make exceptions to the requirements in this chapter?