WSR 21-11-014
EXPEDITED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed May 7, 2021, 1:52 p.m.]

Title of Rule and Other Identifying Information: WAC 82-50-021 Official state lagged semi-monthly pay dates established.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 82-50-021 publishes the official lagged, semi-monthly pay dates for state officers and employees. This WAC, which provides pay dates for the current and ensuing calendar years, is amended each year to add pay dates for the ensuing year and delete the pay dates for the previous year. The purpose of this filing is to establish official pay dates for state officers and employees for calendar year 2022 and delete the obsolete pay dates for calendar year 2020.

Reasons Supporting Proposal: The statute requires that the office of financial management (OFM) annually update and publish state pay dates.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Statute Being Implemented: RCW 42.16.010(1) and 42.16.017.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Smith, 106 11th Avenue S.W., Olympia, 360-725-0226; Implementation and Enforcement: Brian Tinney, 106 11th Avenue S.W., Olympia, 360-725-0171.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The rule change is internal to state government and only affects state employee pay dates.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Roselyn Marcus, OFM, P.O. Box 43113, Olympia, WA 98504-3113, phone 360-902-0434, email Roselyn.Marcus@ofm.wa.gov, AND RECEIVED BY July 19, 2021.

May 7, 2021
Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-10-059, filed 4/30/20, effective 5/31/20)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years ((~~2020 and~~)) 2021 and 2022:

((~~CALENDAR YEAR 2020~~	~~CALENDAR YEAR 2021~~
~~Friday, January 10, 2020~~	~~Monday, January 11, 2021~~
~~Friday, January 24, 2020~~	~~Monday, January 25, 2021~~
~~Monday, February 10, 2020~~	~~Wednesday, February 10, 2021~~
~~Tuesday, February 25, 2020~~	~~Thursday, February 25, 2021~~
~~Tuesday, March 10, 2020~~	~~Wednesday, March 10, 2021~~
~~Wednesday, March 25, 2020~~	~~Thursday, March 25, 2021~~
~~Friday, April 10, 2020~~	~~Friday, April 9, 2021~~
~~Friday, April 24, 2020~~	~~Monday, April 26, 2021~~
~~Monday, May 11, 2020~~	~~Monday, May 10, 2021~~
~~Friday, May 22, 2020~~	~~Tuesday, May 25, 2021~~
~~Wednesday, June 10, 2020~~	~~Thursday, June 10, 2021~~
~~Thursday, June 25, 2020~~	~~Friday, June 25, 2021~~
~~Friday, July 10, 2020~~	~~Friday, July 9, 2021~~
~~Friday, July 24, 2020~~	~~Monday, July 26, 2021~~
~~Monday, August 10, 2020~~	~~Tuesday, August 10, 2021~~
~~Tuesday, August 25, 2020~~	~~Wednesday, August 25, 2021~~
~~Thursday, September 10, 2020~~	~~Friday, September 10, 2021~~
~~Friday, September 25, 2020~~	~~Friday, September 24, 2021~~
~~Friday, October 9, 2020~~	~~Friday, October 8, 2021~~
~~Monday, October 26, 2020~~	~~Monday, October 25, 2021~~
~~Tuesday, November 10, 2020~~	~~Wednesday, November 10, 2021~~
~~Wednesday, November 25, 2020~~	~~Wednesday, November 24, 2021~~
~~Thursday, December 10, 2020~~	~~Friday, December 10, 2021~~
~~Thursday, December 24, 2020~~	~~Thursday, December 23, 2021~~))

CALENDAR YEAR 2021	CALENDAR YEAR 2022
Monday, January 11, 2021	Monday, January 10, 2022
Monday, January 25, 2021	Tuesday, January 25, 2022
Wednesday, February 10, 2021	Thursday, February 10, 2022
Thursday, February 25, 2021	Friday, February 25, 2022
Wednesday, March 10, 2021	Thursday, March 10, 2022
Thursday, March 25, 2021	Friday, March 25, 2022
Friday, April 9, 2021	Monday, April 11, 2022
Monday, April 26, 2021	Monday, April 25, 2022
Monday, May 10, 2021	Tuesday, May 10, 2022
Tuesday, May 25, 2021	Wednesday, May 25, 2022
Thursday, June 10, 2021	Friday, June 10, 2022
Friday, June 25, 2021	Friday, June 24, 2022
Friday, July 9, 2021	Monday, July 11, 2022
Monday, July 26, 2021	Monday, July 25, 2022

CALENDAR YEAR 2021	CALENDAR YEAR 2022
Tuesday, August 10, 2021	Wednesday, August 10, 2022
Wednesday, August 25, 2021	Thursday, August 25, 2022
Friday, September 10, 2021	Friday, September 9, 2022
Friday, September 24, 2021	Monday, September 26, 2022
Friday, October 8, 2021	Friday, October 7, 2022
Monday, October 25, 2021	Tuesday, October 25, 2022
Wednesday, November 10, 2021	Thursday, November 10, 2022
Wednesday, November 24, 2021	Wednesday, November 23, 2022
Friday, December 10, 2021	Friday, December 9, 2022
Thursday, December 23, 2021	Thursday, December 23, 2022

WSR 21-11-041
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE
(Pulse Crops Commission)
[Filed May 12, 2021, 4:31 p.m.]

Title of Rule and Other Identifying Information: Chapter 16-536 WAC, Washington pulse crops commission. This is the marketing order for Washington pulse crops.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making amends the Washington pulse crops commission marketing order by (1) removing term limits; (2) changing the terms "dry peas and lentils" to "pulse crops"; and (3) adding public records request procedures.

Reasons Supporting Proposal: Increased state government requirements make it difficult to seat a volunteer board. Removing term limits allows board members to seek appointment to more than two terms. This will allow the commission to retain knowledge and provide continuity in order to direct the commission and carry out the purposes of the marketing order. In addition, RCW 42.56.040 requires agencies to publish its procedures regarding public disclosure requests.

Statutory Authority for Adoption: RCW 15.65.047, 42.56.040; and chapter 34.05 RCW.

Statute Being Implemented: Chapters 15.65 and 42.56 RCW.

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

Name of Proponent: Washington pulse crops commission and the Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Teresa Norman, Olympia, 360-902-2043; Implementation and Enforcement: Tim McGreevy, Pullman, 208-882-3023.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Using the expedited rule-making process is appropriate because the subject matter does not rise to the importance of a referendum of affected producers.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Teresa Norman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-2043, fax 360-902-2092, email tnorman@agr.wa.gov, AND RECEIVED BY July 20, 2021.

May 12, 2021
Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 16-15-004, filed 7/7/16, effective 8/7/16)

WAC 16-536-020 The pulse crops board. (1) **Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of ten members. Eight members shall be affected producers appointed as provided in this marketing order. One member shall be an affected handler appointed as provided in this marketing order. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member.

(b) For the purpose of nomination and appointment of producer members of the board, the affected area of the state of Washington shall be divided into four representative districts as follows:

(i) District I shall have three board members, being positions 1, 2 and 3 and shall include the county of Whitman.

(ii) District II shall have two board members, being positions 4 and 5 and shall include the county of Spokane.

(iii) District III shall have one board member being position 6 and shall include the counties of Walla Walla, Garfield, Columbia and Asotin.

(iv) District IV shall have two board members, being positions 7 and 8 and shall include all other counties of the state of Washington: Provided, That the addition of another member, being position 8, shall not become effective until approved by a referendum vote of the affected commercial wrinkled pea seed producers.

(3) **Board membership qualifications.**

(a) The producer members of the board must be practical producers of pulse crops in the district in and for which they are nominated and appointed and each shall be a citizen and resident of the state, over the age of eighteen years. Each producer board member must be and have been actually engaged in producing pulse crops within the state of Washington for a period of five years and has during that time derived a substantial portion of his or her income therefrom and is not engaged in business, directly or indirectly, as a handler or other dealer.

(b) The handler member of the board must be a practical handler of pulse crops and shall be a citizen and resident of the state, over the age of eighteen years. The handler board member must be and have been, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative actually engaged in handling pulse crops within the state of Washington for a period of five years and has during that period derived a substantial portion of his or her income therefrom.

(c) The qualifications of members of the board must continue during their term of office.

(4) **Term of office.**

(a) The term of office for members of the board shall be three years, and one-third of the membership as nearly as possible shall be appointed each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through eight, the affected handler shall have position nine and the member representing the director position ten.

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

Positions seven, eight, nine, and ten - One year

Positions four, five and six - Two years

Positions one, two, and three - Three years

(d) ((~~Except for the director's representative, no appointed member of the board may serve more than two full consecutive three-year terms.~~

~~(e)~~)) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

(5) **Nomination of director-appointed board members.**

(a) For the purpose of nominating candidates for appointment to board membership the director shall call separate meetings of affected producers and affected handlers.

(b) Each year the director shall call a nomination meeting for director-appointed board members in those districts whose board members term is about to expire. The meeting(s) shall be held at least thirty days in advance of the date set by the director for the advisory vote of board members.

(c) Notice of a nomination meeting shall be published in newspapers of general circulation within the affected district not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers within such affected district and handlers according to the list maintained by the board pursuant to RCW 15.65.295.

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

(e) Any qualified affected producer or handler may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the meeting by written petition filed with the director signed by not less than five affected producers or affected handlers.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open board position(s) by mail to all affected producers and handlers. Nominating petitions for producers and handlers shall be signed by not less than five affected producers and handlers. Final date for filing nominations shall be not less than twenty days after the notice was mailed.

(g) When only one nominee is nominated for a director-appointed position, RCW 15.65.250 shall apply.

(6) **Advisory vote of board members.**

(a) An advisory vote shall be conducted by secret ballot under the supervision of the director within the month of May. Each affected producer and affected handler shall be entitled to one vote.

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

(c) Notice of every advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the advisory vote. Not less than ten days prior to every advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer and affected handler entitled to vote whose name appears upon the list of such affected producers and affected handlers maintained by the board pursuant to RCW 15.65.295. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications.

(d) Nonreceipt of a ballot by an affected producer or affected handler shall not invalidate the advisory vote of any board member.

(7) **Vacancies.** In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

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

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt by resolution

provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

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

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

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

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

(e) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating the order: Provided, That the total reimbursement to all applicants shall not exceed two thousand dollars.

(f) To establish a "pulse crops board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

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

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

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

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

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

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

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

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

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

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

(q) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(r) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(s) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of pulse crops.

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

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of pulse crops including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(w) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(x) To maintain a list of the names and addresses of persons who handle pulse crops within the affected area and data on the amount and value of the ((~~dry peas and lentils~~)) pulse crops handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(y) To maintain a list of the names and addresses of all affected persons who produce pulse crops and the amount, by unit, of pulse crops produced during the past three years pursuant to RCW 15.65.295.

(z) To maintain a list of all persons who handle pulse crops and the amount of pulse crops handled by each person during the past three years pursuant to RCW 15.65.295.

(aa) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(11) **Procedures for board.**

(a) The board shall hold regular meetings with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). The notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting through regular wire news services and radio-television press.

(c) The board may call special meetings as provided under RCW 42.30.080.

NEW SECTION

WAC 16-536-090 Description, address, and telephone number of the Washington pulse crops commission. Headquartered at 2780 W. Pullman Road, Moscow, Idaho 83843, the Washington pulse crops commission serves Washington pulse crops producers by supporting the pulse crops industry in the areas of marketing, education, and research. The telephone number is 208-882-3023.

NEW SECTION

WAC 16-536-100 Public records officer. (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

(2) The name of the commission's current public records officer is on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

NEW SECTION

WAC 16-536-110 Request for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Washington Pulse Crops Commission, 2780 W. Pullman Road, Moscow, Idaho 83843. The request may also be submitted by email to: eaune@usapulses.org. The written request must include:

(a) The name, address, and telephone number or other contact information of the person requesting the records;

(b) The calendar date on which the request is made; and

(c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee;

(c) Public records may not be marked or altered in any manner during the inspection; and

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

NEW SECTION

WAC 16-536-115 Response to public records requests. (1) The public records officer shall respond to public records requests within five business days by:

(a) Making the records available for inspection or copying;

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

(e) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The

public records officer is not obligated to provide further response if the requestor fails to clarify the request.

(4) In the event the requested records name a specific person or pertain to a specific person and may be exempt from disclosure, the commission may, prior to providing the records, give notice to others whose rights may be affected by the disclosure. Sufficient notice will be given to allow affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

NEW SECTION

WAC 16-536-120 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington pulse crops commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

NEW SECTION

WAC 16-536-125 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.65 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.65 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(8)).

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2) and 42.56.290).

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230(5)).

NEW SECTION

WAC 16-536-130 Review of denial of public records requests. (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

NEW SECTION

WAC 16-536-135 Records index. The commission shall establish a records index, which shall be made available for public review. The index includes the following records:

(1) Commission authorizing statute;

(2) Commission marketing order;

(3) Minutes of commission meetings;

(4) Commission board roster; and

(5) List of marketing, education, and research projects.

WSR 21-11-048
EXPEDITED RULES
SKAGIT VALLEY COLLEGE
[Filed May 13, 2021, 11:43 a.m.]

Title of Rule and Other Identifying Information: WAC 132D-125-090 Directory information.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington community and technical college presidents recently approved a global definition of directory information for all Washington community and technical colleges. The proposed changes will bring Skagit Valley College into compliance with the new global definition. Additionally, an update has been made for the title of the position referred to in the WAC.

Reasons Supporting Proposal: Washington community and technical college presidents recently approved a global

definition of directory information for all Washington community and technical colleges. The proposed changes will bring Skagit Valley College into compliance with the new global definition. Additionally, an update has been made for the title of the position referred to in the WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Skagit Valley College, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Caryn Regimbal, 2405 East College Way, Mount Vernon, WA 98273, 360-416-7620; Enforcement: Claire Peinado, 2405 East College Way, Mount Vernon, WA 98273, 360-416-7961.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: [Rule making] will bring Skagit Valley College into compliance with the new global definition.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Lisa Radeleff, Skagit Valley College, 2405 East College Way, Mount Vernon, WA 98273, phone 360-416-7995, fax 360-416-7773, email lisa.radeleff@skagit.edu, AND RECEIVED BY July 19, 2021.

May 13, 2021
Lisa Radeleff
Rules Coordinator

AMENDATORY SECTION (Amending WSR 94-01-028, filed 12/6/93, effective 1/6/94)

WAC 132D-125-090 Directory information. (1) The college may release "directory information" concerning a student to the public unless the student requests in writing of the dean of ((~~administrative and student~~)) enrollment services that the student's directory information not be released except as provided in WAC 132D-125-070, 132D-125-080, or 132D-125-085.

(2) The term "directory information" shall include information relating to the student's name; ((~~local and home telephone number; local and home address; date and place of birth;~~)) major field of study((~~, dates of attendance, and degrees and awards received; participation in officially recognized sports and activities; weight and height if a member of an athletic team; and the most recent previous educational institution attended~~)); enrollment status; dates of attendance; participation in recognized sports; degree or certificate earned; term degree or certificate awarded; honors.

WSR 21-11-050
EXPEDITED RULES
GAMBLING COMMISSION
[Filed May 13, 2021, 1:48 p.m.]

Title of Rule and Other Identifying Information: WAC 230-01-015 Effective dates for rule-making orders.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is considering repealing this rule as circumstances have changed. The gambling commission no longer uses the effective date timelines outlined in the rule, rather it identifies the effective date on the rule-making order (CR-103P for permanent rules or a CR-103E for emergency rules) in accordance with RCW 34.05.380, 34.05.350, and 34.05.360.

Reasons Supporting Proposal: This rule is not consistent with current agency practices and therefore should be repealed.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, LLM, 4564 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: Tina Griffin, Interim Director, 4564 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Interim Assistant Director, 901 North Monroe, Suite 240, Spokane, WA 99201, 509-325-7904.

This notice meets the following criteria to use the expedited repeal process for these rules:

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This rule can be repealed through expedited rule making because the rule is not consistent with current agency practices as circumstances have changed. The agency implements effective dates consistent with RCW 34.05.380, 34.05.350, and 34.05.360 (identified on the rule-making orders). Repealing this rule is necessary to avoid confusion but will not have an impact on agency practices in terms of rule-making effective dates.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ashlie Laydon, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, phone 360-486-3473, fax 360-486-3632, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, AND RECEIVED BY July 19, 2021.

May 13, 2021
Ashlie Laydon
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-01-015 Effective dates for rule-making orders.

WSR 21-11-079
EXPEDITED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed May 18, 2021, 8:41 a.m.]

Title of Rule and Other Identifying Information: WAC 192-240-025 Failure to apply for or accept suitable work—RCW 50.22.020 (4)(b)—Extended benefits.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On April 16, 2021, the governor signed SSB 5425 (2021) which, among other things, updated the requirements for extended unemployment benefits for claimants when offered suitable work. Under the proposed expedited rule, a claimant will be denied extended benefits for failing to accept suitable work if the job was either offered in writing **or** listed with the department, as oppossed [opposed] to denying benefits if the job was offered in writing **and** listed with the department.

Reasons Supporting Proposal: Under former RCW 50.22.020 (4)(b), the department did not deny extended unemployment benefits to a claimant for failing to accept suitable work if the position was not offered to the individual in writing **and** was not listed with the department. The legislature amended RCW 50.22.020 in SSB 5425 (2021) to require that extended benefits be denied if the job was either offered in writing **or** listed with the department. The rule needs to be changed in order to make the rule consistent with the underlying statute. Failing to change the rule will mean the rule will be in direct conflict with the underlying statute.

Statutory Authority for Adoption: RCW 50.22.020 (4)(b) addresses denial of extended benefits for failing to accept suitable work; RCW 50.12.010 and 50.12.040 provides general rule-making authority to the employment security department (ESD).

Statute Being Implemented: RCW 50.22.020.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, Washington, 360-890-9579.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed expedited rule aligns WAC 192-240-025 with changes made in section 3, chapter 107, Laws of 2021 (Substitute Senate Bill 5425).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Josh Dye, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, email rules@esd.wa.gov, TTD relay 711, AND RECEIVED BY July 20, 2021.

May 18, 2021
Dan Zeitlin
Employment Security
Policy Director

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-240-025 Failure to apply for or accept suitable work—RCW 50.22.020 (4)(b)—Extended benefits. (1) You will be denied extended benefits if you fail:

(a) To accept any offer of suitable work as defined in WAC 192-240-020 if the job was:

(i) Offered to you in writing; or

(ii) Listed with the department.

(b) To accept a referral, or to apply for suitable work, when referred by your local employment center, if the job was:

(i) Offered to you in writing((,)); or

(ii) Listed with the department.

(2) The denial is for the week in which the refusal occurs and until you work in four weeks and earn four times your weekly benefit amount.

WSR 21-11-081
EXPEDITED RULES
HEALTH CARE AUTHORITY
[Filed May 18, 2021, 10:02 a.m.]

Title of Rule and Other Identifying Information: WAC 182-550-1050 Hospital services definitions, 182-550-1100 Hospital care—General, 182-550-1400 Covered and noncovered revenue codes categories and subcategories for inpatient hospital services, 182-550-2400 Inpatient chronic pain management services, 182-550-2650 Base community psychiatric hospitalization payment method for medicaid and CHIP clients and nonmedicaid and non-CHIP clients, 182-550-3000 Payment method, 182-550-4300 Hospitals and units exempt from the DRG payment method, and 182-550-4400 Services—Exempt from DRG payment.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health care authority (HCA) is amending these sections to fix outdated behavioral health references and terminology, to update references to correct state agencies, and other minor housekeeping changes.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Cynthia Rivers, P.O. Box 45111 Olympia, WA 98504-5111, 360-725-5282.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Health Care Authority, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1306, fax 360-586-9272, email arc@hca.wa.gov, AND RECEIVED BY July 20, 2021.

May 18, 2021
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-06-053, filed 2/24/16, effective 4/1/16)

WAC 182-550-1050 Hospital services definitions. The following definitions and abbreviations, those found in chapter 182-500 WAC, Medical definitions, and definitions and abbreviations found in other sections of this chapter apply to this chapter. When a term is not defined in this chapter, other agency or agency's designee WAC, or state or federal law, the medical definitions found in *Taber's Cyclopedic Medical Dictionary* apply.

"Accommodation costs" - The expenses incurred by a hospital to provide its patients services for which a separate charge is not customarily made. These expenses include, but are not limited to, room and board, medical social services, psychiatric social services, and the use of certain hospital equipment and facilities.

"Accredited" or **"accreditation"** - A term used by nationally recognized health organizations, such as the commission on accreditation of rehabilitation facilities (CARF), to indicate a facility meets both professional and community standards of medical care.

"Acute" - A medical condition of severe intensity with sudden onset. For the purposes of the acute physical medicine and rehabilitation (Acute PM&R) program, acute means an intense medical episode, not longer than three months.

"Acute care" - Care provided for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional to maintain their health status.

"Acute physical medicine and rehabilitation (acute PM&R)" - A comprehensive inpatient rehabilitative program coordinated by an interdisciplinary team at an agency-approved rehabilitation facility. The program provides twenty-four-hour specialized nursing services and an intense level of therapy for specific medical conditions for which the client shows significant potential for functional improvement. Acute PM&R is a twenty-four hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation.

"Administrative day" or **"administrative days"** - One or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate.

"Administrative day rate" - The agency's statewide medicaid average daily nursing facility rate.

"Aggregate cost" - The total cost or the sum of all constituent costs.

"Aggregate operating cost" - The total cost or the sum of all operating costs.

"All-patient DRG grouper (AP-DRG)" - A computer software program that determines the medical and surgical diagnosis-related group (DRG) assignments used by the agency for inpatient admissions between August 1, 2007, and June 30, 2014.

"All-patient refined DRG grouper (APR-DRG)" - A computer software program that determines the medical and surgical diagnosis-related group (DRG) assignments used by the agency for inpatient admissions on and after July 1, 2014.

"Allowable" - The calculated amount for payment, after exclusion of any "nonallowed service or charge," based on the applicable payment method before final adjustments, deductions, and add-ons.

"Allowed amount" - The initial calculated amount for any procedure or service, after exclusion of any "nonallowed service or charge," that the agency allows as the basis for payment computation before final adjustments, deductions, and add-ons.

"Allowed charges" - The total billed charges for allowable services.

"Allowed covered charges" - The total billed charges for services minus the billed charges for noncovered services, denied services, or both.

"Ambulatory payment classification (APC)" - A grouping that categorizes outpatient visits according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed.

"Ambulatory surgery" - A surgical procedure that is not expected to require an inpatient hospital admission.

"Ancillary services" - Additional or supporting services provided by a hospital to a client during the client's hospital stay. These services include, but are not limited to: Laboratory, radiology, drugs, delivery room, operating room, postoperative recovery rooms, and other special items and services.

"Appropriate level of care" - The level of care required to best manage a client's illness or injury based on:

(1) The severity of illness and the intensity of services required to treat the illness or injury; or

(2) A condition-specific episode of care.

"Audit" - An assessment, evaluation, examination, or investigation of a health care provider's accounts, books, and records, including:

(1) Health, financial, and billing records pertaining to billed services paid by the agency through Washington apple health, by a person not employed or affiliated with the provider, to verify the service was provided as billed and was allowable under program regulations; and

(2) Financial, statistical, and health records, including mathematical computations and special studies conducted supporting the medicare cost report (Form 2552-96 and 2552-10 or successor form), submitted to the agency to establish program rates for payment to hospital providers.

"Authorization" - See **"prior authorization"** and **"expedited prior authorization (EPA)."**

"Bad debt" - An operating expense or loss incurred by a hospital because of uncollectible accounts receivables.

"Bedside nursing services" - Services included under the room and board services paid to the facility and provided by nursing service personnel. These services include, but are not limited to: Medication administration, IV hydration and IV medication administration, vaccine administration, dressing applications, therapies, glucometry testing and other point of care testing, catheterizations, tube feedings and irrigations, and equipment monitoring services.

"Billed charge" - The charge submitted to the agency by the provider.

"Bordering city hospital" - A hospital located in one of the cities listed in WAC 182-501-0175.

"Budget neutral" - A condition in which a claims model produces aggregate payments to hospitals that are the same under two separate payment systems. See also **"budget neutrality factor."**

"Budget neutrality factor" - A multiplier used by the agency to ensure that modifications to the payment method and rates are budget neutral. See also **"budget neutral."**

"Budget target" - Funds appropriated by the legislature or through the agency's budget process to pay for a specific group of services, including anticipated caseload changes or vendor rate increases.

"Budget target adjuster" - A multiplier applied to the outpatient prospective payment system (OPPS) payment to ensure aggregate payments do not exceed the established budget target.

"Bundled services" - Interventions integral to or related to the major procedure. The agency does not pay separately for these services.

"Case mix" - A relative value assigned to a DRG or classification of patients in a medical care environment representing the resource intensity demands placed on an institution.

"Case mix index (CMI)" - The average relative weight of all cases treated in a hospital during a defined period.

"Centers for Medicare and Medicaid Services (CMS)" - See WAC 182-500-0020.

"Charity care" - See chapter 70.170 RCW.

((~~**"Chemical dependency"** - An addiction or dependence on alcohol or drugs, or both.~~))

"Children's health insurance program (CHIP)" - The federal Title XXI program under which medical care is provided to uninsured children younger than age nineteen. Part of Washington apple health.

"Children's hospital" - A hospital primarily serving children.

"Client" - A person who receives or is eligible to receive services through agency programs.

"Commission on accreditation of rehabilitation facilities (CARF)" - See http://www.carf.org/home/.

"CMS PPS input price index" - A measure, expressed as a percentage, of the annual inflationary costs for hospital services.

"Comprehensive hospital abstract reporting system (CHARS)" - The department of health's (DOH's) inpatient hospital data collection, tracking, and reporting system.

"Condition-specific episode of care" - Care provided to a client based on the client's primary condition, complications, comorbidities, standard treatments, and response to treatments.

"Contract hospital" - A hospital contracted by the agency to provide specific services.

"Conversion factor" - A hospital-specific dollar amount that is used in calculating inpatient payments.

"Core provider agreement (CPA)" - The basic contract the agency holds with providers serving Washington apple health clients.

"Cost report" - See **"medicare cost report."**

"Costs" - Agency-approved operating, medical education, and capital-related costs (capital costs) as reported and identified on the "cost report."

"Covered charges" - Billed charges submitted to the agency on a claim by the provider, less the noncovered charges indicated on the claim.

"Covered services" - See **"hospital covered service"** and WAC 182-501-0050.

"Critical border hospital" - An acute care hospital located in a bordering city (see WAC 182-501-0175 for list) that the agency has, through analysis of admissions and hospital days, designated as critical to provide health care for Washington apple health clients.

"Current procedural terminology (CPT)" - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Deductible" - The dollar amount a client is responsible for before an insurer, such as medicare, starts paying or the initial specific dollar amount for which the client is responsible.

"Department of social and health services (DSHS)" - The Washington state agency that provides food assistance, financial aid, medical and behavioral health care, and other services to eligible children, families, and vulnerable adults and seniors of Washington state.

"Diabetes education program" - A comprehensive, multidisciplinary program of instruction offered by a DOH-approved diabetes education provider to diabetic clients for managing diabetes. This includes instruction on nutrition, foot care, medication and insulin administration, skin care, glucose monitoring, and recognition of signs/symptoms of diabetes with appropriate treatment of problems or complications.

"Diagnosis code" - A set of numeric or alphanumeric characters assigned by the current published ICD-CM coding guidelines used by the agency as a shorthand symbol to represent the nature of a disease or condition.

"Diagnosis-related group (DRG)" - A classification system that categorizes hospital patients into clinically coherent and homogenous groups with respect to resource use. Classification of patients is based on the current published ICD-CM coding guidelines used by the agency, the presence of a surgical procedure, patient age, presence or absence of significant comorbidities or complications, and other relevant criteria.

"Direct medical education costs" - The direct costs of providing an approved medical residency program as recognized by medicare.

"Discharging hospital" - The institution releasing a client from the acute care hospital setting.

"Discount factor" - The percentage applied to additional significant procedures when a claim has multiple significant procedures or when the same procedure is performed multiple times on the same day. Not all significant procedures are subject to a discount factor.

"Disproportionate share hospital (DSH) payment" - A supplemental payment made by the agency to a hospital that qualifies for one or more of the disproportionate share hospital programs identified in the state plan. See WAC 182-550-4900.

"Disproportionate share hospital (DSH) program" - A program through which the agency makes payment adjustments to eligible hospitals that serve a disproportionate number of low-income clients in accordance with legislative direction and established payment methods. See 1902 (a)(13)(A)(iv) of the Social Security Act. See also WAC 182-550-4900 through 182-550-5400.

"Dispute conference" - See **"hospital dispute conference."**

"Distinct unit" - A distinct area for psychiatric, rehabilitation, or ((~~detox~~)) withdrawal management services which has been certified by medicare within an acute care hospital or approved by the agency within a children's hospital.

"Division of behavioral health and recovery services (DBHR)" - The division within ((~~DSHS~~)) HCA that administers mental health, problem gambling, and substance abuse programs authorized by chapters 43.20A, 71.05, 71.24, 71.34, and 70.96A RCW.

"DRG" - See **"diagnosis-related group."**

"DRG allowed amount" - The DRG relative weight multiplied by the conversion factor.

"DRG average length-of-stay" - The agency's average length-of-stay for a DRG classification established during an agency DRG rebasing and recalibration project.

"DRG-exempt services" - Services paid through methods other than DRG, such as per diem rate, per case rate, or ratio of costs-to-charges (RCC).

"DRG payment" - The total payment made by the agency for a client's inpatient hospital stay. The DRG payment is the DRG allowed amount plus the high outlier minus any third-party liability, client participation, medicare payment, and any other adjustments applied by the agency.

"DRG relative weight" - A factor used in the calculation of DRG payments. As of July 1, 2014, the medicaid agency uses the 3M™ Corporation's national weights developed for the all-patient refined-diagnosis-related group (APR-DRG) software.

"Enhanced ambulatory patient groupings (EAPG)" - The payment system used by the agency to calculate reimbursement to hospitals for the facility component of outpatient services on and after July 1, 2014. This system uses 3M's EAPGs as the primary basis for payment.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency room" or **"emergency facility"** or **"emergency department"** - A distinct hospital-based facility which provides unscheduled services to clients who require immediate medical attention. An emergency department must be capable of providing emergency medical, surgical, and trauma care services twenty-four hours a day, seven days a week. A physically separate extension of an existing hospital emergency department may be considered a freestanding emergency department as long as the extension provides comprehensive emergency medical, surgical, and trauma care services twenty-four hours a day, seven days a week.

"Emergency services" - Health care services required by and provided to a client after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention

could reasonably be expected to result in placing the client's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part. Inpatient maternity services are considered emergency services by the agency.

"Equivalency factor (EF)" - A factor that may be used by the agency in conjunction with other factors to determine the level of a state-administered program payment. See WAC 182-550-4800.

"Exempt hospital - DRG payment method" - A hospital that for a certain client category is reimbursed for services to Washington apple health clients through methodologies other than those using DRG conversion factors.

"Expedited prior authorization (EPA)" - See WAC 182-500-0030.

"Experimental service" - A procedure, course of treatment, drug, or piece of medical equipment, which lacks scientific evidence of safety and effectiveness. See WAC 182-531-0050. A service is not "experimental" if the service:

(1) Is generally accepted by the medical profession as effective and appropriate; and

(2) Has been approved by the federal Food and Drug Administration (FDA) or other requisite government body if approval is required.

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

"Fiscal intermediary" - Medicare's designated fiscal intermediary for a region or category of service, or both.

"Fixed per diem rate" - A daily amount used to determine payment for specific services provided in long-term acute care (LTAC) hospitals.

"Formal release" - When a client:

(1) Discharges from a hospital or distinct unit;

(2) Dies in a hospital or distinct unit;

(3) Transfers from a hospital or distinct unit as an acute care transfer; or

(4) Transfers from the hospital or distinct unit to a designated psychiatric unit or facility, or a designated acute rehabilitation unit or facility.

"Global surgery days" - The number of preoperative and follow-up days that are included in the payment to the physician for the major surgical procedure.

"Graduate medical education costs" - The direct and indirect costs of providing medical education in teaching hospitals. See "direct medical education costs" and "indirect medical education costs."

"Grouper" - See **"all-patient DRG grouper (APDRG)"** and **"all-patient refined DRG grouper (APR-DRG)."**

"Health care authority (medicaid agency)" - The Washington state agency that administers Washington apple health.

"High outlier" - A DRG claim classified by the agency as being allowed a high outlier payment that is paid under the DRG payment method, does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the agency. See WAC 182-550-3700.

"Hospice" - A medically directed, interdisciplinary program of palliative services for terminally ill clients and the clients' families. Hospice is provided under arrangement with a Washington state-licensed and Title XVIII-certified Washington state hospice.

"Hospital" - An entity that is licensed as an acute care hospital in accordance with applicable state laws and regulations, or the applicable state laws and regulations of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit, a "psychiatric hospital" as defined in this section, or any other distinct unit of the hospital.

"Hospital covered service" - Any service, treatment, equipment, procedure, or supply provided by a hospital, covered under a Washington apple health program, and within the scope of an eligible client's Washington apple health program.

"Hospital cost report" - See **"cost report."**

"Hospital readmission" - A situation in which a client who was admitted as an inpatient and discharged from the hospital has returned to inpatient status to the same or a different hospital.

"Indirect medical education costs" - The indirect costs of providing an approved medical residency program as recognized by medicare.

"Inflation adjustment" - For cost inflation, this is the hospital inflation adjustment. This adjustment is determined by using the inflation factor method approved by the legislature. For charge inflation, this is the inflation factor determined by comparing average discharge charges for the industry from one year to the next, as found in the comprehensive hospital abstract reporting system (CHARS) Hospital Census and Charges by Payer report.

"Inpatient hospital admission" - A formal admission to a hospital based on an evaluation of the client using objective clinical indicators to provide medically necessary, acute inpatient care. These indicators include assessment, monitoring, and therapeutic services as required to best manage the client's illness or injury. All applicable indicators must be documented in the client's health record. The decision to admit a client to inpatient status should be based on the condition-specific episode of care, severity of illness presented, and the intensity of services rendered. The agency does not deem inpatient hospital admissions as covered or noncovered solely on the basis of the length of time the client actually spends in the hospital. Generally, a client remains overnight and occupies a bed. Inpatient status can apply even if the client is discharged or transferred to another acute hospital and does not actually use a hospital bed overnight. For the agency to recognize a stay as inpatient there must be a physician admission order in the client's medical record indicating the status as inpatient.

"Inpatient medicaid DRG conversion factor" - A dollar amount that represents selected hospitals' average costs of treating medicaid and CHIP clients. The conversion factor is a rate that is multiplied by a DRG relative weight to pay medicaid and CHIP claims under the DRG payment method. See WAC 182-550-3800 for how this conversion factor is calculated.

"Inpatient services" - Health care services provided to a client during hospitalization whose condition warrants formal admission and treatment in a hospital.

"Inpatient state-administered program conversion factor" - A DRG conversion factor reduced from the inpatient medicaid DRG conversion factor to pay a hospital for inpatient services provided to a client eligible under a state-administered program. The conversion factor is multiplied by a DRG relative weight to pay claims under the DRG payment method.

"Intermediary" - See **"fiscal intermediary."**

"International Classification of Diseases (ICD-9-CM and ICD-10-CM)" - The systematic listing of diseases, injuries, conditions, and procedures as numerical or alpha numerical designations (coding).

"Length of stay (LOS)" - The number of days of inpatient hospitalization, calculated by adding the total number of days from the admission date to the discharge date, and subtracting one day.

"Long-term acute care (LTAC) services" - Inpatient intensive long-term care services provided in agency-approved LTAC hospitals to eligible Washington apple health clients who meet criteria for level 1 or level 2 services. See WAC 182-550-2565 through 182-550-2596.

"LTAC level 1 services" - LTAC services provided to a client who requires eight or more hours of direct skilled nursing care per day and the client's medical needs cannot be met at a lower level of care due to clinical complexity. Level 1 services include one of the following:

(1) Ventilator weaning care; or

(2) Care for a client who has:

(a) Chronic open wounds that require on-site wound care specialty services and daily assessments and/or interventions; and

(b) At least one comorbid condition (such as chronic renal failure requiring hemodialysis).

"LTAC level 2 services" - LTAC services provided to a client who requires four or more hours of direct skilled nursing care per day, and the clients' medical needs cannot be met at a lower level of care due to clinical complexity. Level 2 services include at least one of the following:

(1) Ventilator care for a client who is ventilator-dependent and is not weanable and has complex medical needs; or

(2) Care for a client who:

(a) Has a tracheostomy;

(b) Requires frequent respiratory therapy services for complex airway management and has the potential for decannulation; and

(c) Has at least one comorbid condition (such as quadriplegia).

"Major diagnostic category (MDC)" - One of the mutually exclusive groupings of principal diagnosis areas in the AP-DRG and APR-DRG classification systems.

"Medical care services (MCS)" - See WAC 182-500-0070.

"Medical education costs" - The expenses incurred by a hospital to operate and maintain a formally organized graduate medical education program.

"Medical visit" - Diagnostic, therapeutic, or consultative services provided to a client by a health care professional in an outpatient setting.

"Medicare cost report" - The medicare cost report (Form 2552-96 or Form 2552-10), or successor document, completed and submitted annually by a hospital provider.

"Medicare crossover" - A claim involving a client who is eligible for both medicare benefits and medicaid.

"Medicare physician fee schedule (MPFS)" - The official CMS publication of relative value units and medicare payment policy indicators for the resource-based relative value scale (RBRVS) payment program.

"Medicare Part A" - See WAC 182-500-0070.

"Medicare Part B" - See WAC 182-500-0070.

"Medicare payment principles" - The rules published in the federal register regarding payment for services provided to medicare clients.

((~~**"Mental health designee"** - A professional contact person authorized by the division of behavioral health and recovery (DBHR) of DSHS, who operates under the direction of a behavioral health organization (BHO) or a prepaid inpatient health plan (PIHP). See WAC 182-550-2600.~~))

"Military hospital" - A hospital reserved for the use of military personnel, their dependents, and other authorized users.

"Modifier" - A two-digit alphabetic and/or numeric identifier added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting hospital can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"National Correct Coding Initiative (NCCI)" - A national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the *American Medical Associations' Current Procedural Terminology (CPT®)* manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The Centers for Medicare and Medicaid Services (CMS) maintain NCCI policy. Information can be found at http://www.cms.hhs.gov/NationalCorrectCodInitEd/.

"National Drug Code (NDC)" - The eleven-digit number the manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The eleven-digit NDC is composed of a five-four-two grouping. The first five digits comprise the labeler code assigned to the manufacturer by the FDA. The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"National payment rate (NPR)" - A rate for a given procedure code, published by CMS, that does not include a state- or location-specific adjustment.

"National Provider Identifier (NPI)" - A standard, unique identifier for health care providers assigned by CMS. The agency's ProviderOne system pays for inpatient and outpatient services using only one NPI per provider. The agency

may make an exception for inpatient claims billed with medicare-certified, distinct unit NPIs.

"Nationwide rate" - See **"national payment rate (NPR)."**

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

"Newborn" or **"neonate"** or **"neonatal"** - A person younger than twenty-nine days old.

"Nonallowed service or charge" - A service or charge billed by the provider as noncovered or denied by the agency. This service or charge cannot be billed to the client except under the conditions identified in WAC 182-502-0160.

"Noncovered charges" - Billed charges a provider submits to the agency on a claim and indicates them on the claim as noncovered.

"Noncovered service or charge" - A service or charge the agency does not consider or pay for as a "hospital covered service." This service or charge may not be billed to the client, except under the conditions identified in WAC 182-502-0160.

"Nursing service personnel" - A group of health care professionals that includes, but is not limited to: Registered nurse (RN), licensed practical nurse (LPN), certified nursing assistant/nursing assistant certified (CNA/NAC).

"Observation services" - A well-defined set of clinically appropriate services furnished while determining whether a client will require formal inpatient admission or be discharged from the hospital. Services include ongoing short-term treatment, monitoring, assessment, and reassessment. Rarely do reasonable and necessary observation services exceed forty-eight hours. The agency or ((~~its~~)) the agency's designee may determine through the retrospective utilization review process that an inpatient hospital service should have been billed as an observation service.

"Operating costs" - All expenses incurred providing accommodation and ancillary services, excluding capital and medical education costs.

"Orthotic device" or **"orthotic"** - A corrective or supportive device that:

(1) Prevents or corrects physical deformity or malfunction; or

(2) Supports a weak or deformed portion of the body.

"Out-of-state hospital" - Any hospital located outside the state of Washington and the bordering cities designated in WAC 182-501-0175. For Washington apple health clients requiring psychiatric services, an "out-of-state hospital" is any hospital located outside the state of Washington.

"Outliers" - Cases with extraordinarily high costs when compared to other cases in the same DRG.

"Outpatient" - A client who is receiving health care services, other than inpatient services, in a hospital setting.

"Outpatient care" - See **"outpatient hospital services."**

"Outpatient ((~~code editor (OCE)~~)) enhanced ambulatory payment grouper (EAPG)" - A software program the agency uses for classifying and editing in enhanced ambulatory payment ((~~classification (APC)~~)) grouping-based OPPS.

"Outpatient hospital" - A hospital authorized by DOH to provide outpatient services.

"Outpatient hospital services" - Those health care services that are within a hospital's licensure and provided to a client who is designated as an outpatient.

"Outpatient observation" - See **"observation services."**

"Outpatient prospective payment system (OPPS)" - The payment system used by the agency to calculate reimbursement to hospitals for the facility component of outpatient services.

"Outpatient prospective payment system (OPPS) conversion factor" - See **"outpatient prospective payment system (OPPS) rate."**

"Outpatient prospective payment system (OPPS) rate" - A hospital-specific multiplier assigned by the agency that is one of the components of the APC payment calculation.

"Outpatient surgery" - A surgical procedure that is not expected to require an inpatient hospital admission.

"Pass-throughs" - Certain drugs, devices, and biologicals, as identified by CMS, for which providers are entitled to additional separate payment until the drugs, devices, or biologicals are assigned their own APC.

"Per diem" - A method which uses a daily rate to calculate payment for services provided as a "hospital covered service."

"PM&R" - See **"Acute PM&R."**

"Point of care testing (POCT)" - A test designed to be used at or near the site where the patient is located, that does not require permanent dedicated space, and that is performed outside the physical facilities of the clinical laboratory.

"Primary care case management (PCCM)" - The coordination of health care services under the agency's Indian health center or tribal clinic managed care program. See WAC 182-538-068.

"Principal diagnosis" - The condition chiefly responsible for the admission of the patient to the hospital.

"Prior authorization" - See WAC 182-500-0085.

"Private room rate" - The rate customarily charged by a hospital for a one-bed room.

"Prospective payment system (PPS)" - A payment system in which what is needed to calculate payments (methods, types of variables, and other factors) is set in advance and is knowable by all parties before care is provided. In a retrospective payment system, what is needed (actual costs or charges) is not available until after care is provided.

"Prosthetic device" or **"prosthetic"** - A replacement, corrective, or supportive device prescribed by a physician or other licensed practitioner, within the scope of his or her practice as defined by state law, to:

(1) Artificially replace a missing portion of the body;

(2) Prevent or correct physical deformity or malfunction; or

(3) Support a weak or deformed portion of the body.

"Psychiatric hospital" - A medicare-certified distinct psychiatric unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital. Eastern state hospital and western state hospital are excluded from this definition.

"Public hospital district" - A hospital district established under chapter 70.44 RCW.

"Ratable" - A factor used to calculate inpatient payments for state-administered programs.

"Ratio of costs-to-charges (RCC)" - A method used to pay hospitals for some services exempt from the DRG payment method. It also refers to the percentage applied to a hospital's allowed covered charges for medically necessary services to determine estimated costs, as determined by the agency, and payment to the hospital for some DRG-exempt services.

"Rebasing" - The process used by the agency to update hospital payment policies, related variables (rates, factors, thresholds, multipliers, and caps), and system processes (edits, adjudication, grouping, etc.).

"Recalibration" - The process of recalculating DRG relative weights using historical data.

"Rehabilitation units" - Specifically identified rehabilitation hospitals and designated rehabilitation units of hospitals that meet agency and medicare criteria for distinct rehabilitation units.

"Relative weights" - See **"DRG relative weights."**

"Reserve days" - The days beyond the ninetieth day of hospitalization of a medicare patient for a benefit period or incidence of illness. See also **"lifetime hospitalization reserve."**

"Revenue code" - A nationally assigned coding system for billing inpatient and outpatient hospital services, home health services, and hospice services.

"Room and board" - Routine supplies and services provided to a client during the client's hospital stay. This includes, but is not limited to, a regular or special care hospital room and related furnishings, room supplies, dietary and bedside nursing services, and the use of certain hospital equipment and facilities.

"Rural health clinic" - See WAC 182-549-1100.

"Rural hospital" - An acute care health care facility capable of providing or assuring availability of inpatient and outpatient hospital health services in a rural area.

"Semi-private room rate" - A rate customarily charged for a hospital room with two to four beds; this charge is generally lower than a private room rate and higher than a ward room. See also **"multiple occupancy rate."**

"Significant procedure" - A procedure, therapy, or service provided to a client that constitutes one of the primary reasons for the visit to the health care professional, and represents a substantial portion of the resources associated with the visit.

"Specialty hospitals" - Children's hospitals, psychiatric hospitals, cancer research centers or other hospitals which specialize in treating a particular group of patients or diseases.

"Spenddown" - See chapter 182-519 WAC.

"State plan" - The plan filed by the agency with CMS, Department of Health and Human Services (DHHS), outlining how the state will administer medicaid and CHIP services, including the hospital program.

"Status indicator (SI)" - A code assigned to each medical procedure or service by the agency that contributes to the selection of a payment method.

"Subacute care" - Care provided to a client which is less intensive than that given at an acute care hospital. Skilled nursing, nursing care facilities and other facilities provide subacute care services.

"Substance use disorder (SUD)" - See RCW 71.05.020.

"Survey" - An inspection or review conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with program requirements.

"Swing bed" - An inpatient hospital bed certified by CMS for either acute inpatient hospital or skilled nursing services.

"Swing-bed day" - A day in which a client is receiving skilled nursing services in a hospital-designated swing bed at the hospital's census hour.

"Total patient days" - All patient days in a hospital for a given reporting period, excluding days for skilled nursing, nursing care, and observation days.

"Transfer" - To move a client from one acute care setting to a higher level acute care setting for emergency care or to a post-acute, lower level care setting for ongoing care.

"Transferring hospital" - The hospital or distinct unit that transfers a client to another acute care or subacute facility or distinct unit, or to a nonhospital setting.

"UB-04" - The uniform billing document required for use nationally by hospitals, nursing facilities, hospital-based skilled nursing facilities, home health agencies, and hospice agencies in billing for services provided to patients. This document includes the current national uniform billing data element specifications developed by the National Uniform Billing Committee and approved and modified by the Washington state payer group or the agency.

"Vendor rate increase" - An adjustment determined by the legislature, that may be used to periodically increase rates for payment to vendors, including health care providers, that do business with the state.

"Washington apple health program" - Any health care program administered through the medicaid agency.

AMENDATORY SECTION (Amending WSR 16-06-053, filed 2/24/16, effective 4/1/16)

WAC 182-550-1100 Hospital care—General. (1) The medicaid agency:

(a) Pays for an eligible Washington apple health (((~~(WAH)~~))) client's admission to a hospital only when the client's attending physician orders admission and when the admission and treatment provided:

(i) Are covered under WAC 182-501-0050, 182-501-0060 and 182-501-0065;

(ii) Are medically necessary as defined in WAC 182-500-0070;

(iii) Are determined according to WAC 182-501-0165 when prior authorization is required;

(iv) Are authorized when required under this chapter; and

(v) Meet applicable state and federal requirements.

(b) For hospital admissions, defines "attending physician" as the client's primary care provider, or the primary provider of care to the client at the time of admission.

(2) Medical record documentation of hospital services must meet the requirements in WAC 182-502-0020.

(3) The agency:

(a) Pays for a hospital covered service provided to an eligible ((~~WAH~~)) apple health client enrolled in an agency-contracted managed care organization (MCO) plan, under the fee-for-service program if the service is excluded from the MCO's capitation contract with the agency and meets prior authorization requirements. (See WAC 182-550-2600 for inpatient psychiatric services.)

(b) Does not pay for nonemergency services provided to ((~~a WAH~~)) an apple health client from a nonparticipating hospital in a selective contracting area (SCA) unless exclusions in WAC 182-550-4700 apply. The agency's selective contracting program and selective contracting payment limitations end for hospital claims with dates of admission before July 1, 2007.

(4) The agency pays up to twenty-six days of inpatient hospital care for hospital-based ((~~detoxification~~)) withdrawal management, medical stabilization, and drug treatment for chemical dependent pregnant clients eligible under the chemical-using pregnant (CUP) women program.

See WAC 182-533-0701 through 182-533-0730.

(5) The agency pays for inpatient hospital ((~~detoxification~~)) withdrawal management of acute alcohol or other drug intoxication when the services are provided to an eligible client:

(a) In a ((~~detoxification~~)) withdrawal management unit in a hospital that has a ((~~detoxification~~)) withdrawal management provider agreement with the agency to perform these services and the services are approved by the division of behavioral health and recovery (DBHR) within the ((~~department of social and health services (DSHS)~~)) health care authority (HCA); or

(b) In an acute hospital and all the following criteria are met:

(i) The hospital does not have a ((~~detoxification~~)) withdrawal management specific provider agreement with DBHR;

(ii) The hospital provides the care in a medical unit;

(iii) Nonhospital-based ((~~detoxification~~)) withdrawal management is not medically appropriate for the client;

(iv) The client does not require medically necessary inpatient psychiatric care and it is determined that an approval from ((~~a behavioral health organization (BHO) or a DBHR~~)) the agency or the agency's designee as an inpatient stay is not indicated;

(v) The client's stay qualifies as an inpatient stay;

(vi) The client is not participating in the agency's chemical-using pregnant (CUP) women program; and

(vii) The client's principal diagnosis meets the agency's medical inpatient ((~~detoxification~~)) withdrawal management criteria listed in the agency's published billing instructions.

(6) The agency covers medically necessary dental-related services provided to an eligible client in a hospital-based dental clinic when the services:

(a) Are provided under chapter 182-535 WAC; and

(b) Are billed on the American Dental Association (ADA) or health care financing administration (HCFA) claim form.

(7) The agency pays a hospital for covered dental-related services, including oral and maxillofacial surgeries, that are provided in the hospital's operating room, when:

(a) The covered dental-related services are medically necessary and provided under chapter 182-535 WAC;

(b) The covered dental-related services are billed on a UB claim form; and

(c) At least one of the following is true:

(i) The dental-related service(s) is provided to an eligible ((~~WAH~~)) apple health client on an emergency basis;

(ii) The client is eligible under the division of developmental disability program;

(iii) The client is age eight or younger; or

(iv) The dental service is prior authorized by the agency.

(8) For inpatient voluntary or involuntary psychiatric admissions, see WAC 182-550-2600.

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-1400 Covered and noncovered revenue codes categories and subcategories for inpatient hospital services. Subject to the limitations and restrictions listed, this section identifies covered and noncovered revenue code categories and subcategories for inpatient hospital services.

(1) The medicaid agency pays for an inpatient hospital covered service in the following revenue code categories and subcategories when the hospital provider accurately bills:

(a) "Room & board - Private (one bed)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(b) "Room & board - Semi-private (two bed)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(c) "Room & board - Semi-private - (three and four beds)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(d) "Room & board - Deluxe private," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(e) "Nursery," only subcategories "general classification," "newborn - level I," "newborn - level II," "newborn - level III," and "newborn - level IV";

(f) "Intensive care unit," only subcategories "general classification," "surgical," "medical," "pediatric," "intermediate ICU," "burn care," and "trauma";

(g) "Coronary care unit," only subcategories "general classification," "myocardial infarction," "pulmonary care," and "intermediate CCU";

(h) "Pharmacy," only subcategories "general classification," "generic drugs," "nongeneric drugs," "drugs incident to

other diagnostic services," "drugs incident to radiology," "nonprescription," and "IV solutions";

(i) "IV therapy," only subcategories "general classification," "infusion pump," "IV therapy/pharmacy services," "IV therapy/drug/supply delivery" and "IV therapy/supplies";

(j) "Medical/surgical supplies and devices," only subcategories "general classification," "nonsterile supply," "sterile supply," "pacemaker," "intraocular lens," and "other implant";

(k) "Oncology," only subcategory "general classification";

(l) "Laboratory," only subcategories "general classification," "chemistry," "immunology," "nonroutine dialysis," "hematology," "bacteriology & microbiology," and "urology";

(m) "Laboratory pathology," only subcategories "general classification," "cytology," "histology," and "biopsy";

(n) "Radiology - Diagnostic," only subcategories "general classification," "angiocardiography," "arthrography," "arteriography," and "chest X-ray";

(o) "Radiology - Therapeutic and/or chemotherapy administration," only subcategories "general classification," "chemotherapy administration - injected," "chemotherapy administration - oral," "radiation therapy," and "chemotherapy administration - IV";

(p) "Nuclear medicine," only subcategories "general classification," "diagnostic," "therapeutic," "diagnostic radiopharmaceuticals," and "therapeutic radiopharmaceuticals";

(q) "CT scan," only subcategories "general classification," "head scan," and "body scan";

(r) "Operating room services," only subcategories "general classification" and "minor surgery";

(s) "Anesthesia," only subcategories "general classification," "anesthesia incident to radiology," and "anesthesia incident to other diagnostic services";

(t) "Administration, processing and storage for blood and blood component," only subcategories "general classification" and "administration";

(u) "Other imaging services," only subcategories "general classification," "diagnostic mammography," "ultrasound," and "positron emission tomography";

(v) "Respiratory services," only subcategories "general classification," "inhalation services" and "hyperbaric oxygen therapy";

(w) "Physical therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";

(x) "Speech therapy - Language pathology," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";

(y) "Emergency room," only subcategories "general, urgent care classification" and "urgent care";

(z) "Pulmonary function," only subcategory "general classification";

(aa) "Cardiology," only subcategories "general classification," "cardiac cath lab," "stress test," and "echocardiology";

(bb) "Ambulatory surgical care," only subcategory "general classification";

(cc) "Outpatient services," only subcategory "general classification";

(dd) "Magnetic resonance technology (MRT)," only subcategories "general classification," "MRI - Brain (including brainstem)," "MRI - Spinal cord (including spine)," "MRI-other," "MRA - Head and neck," "MRA - Lower extremities," and "MRA-other";

(ee) "Medical/surgical supplies - Extension," only subcategories "supplies incident to radiology," "supplies incident to other diagnostic services," and "surgical dressings";

(ff) "Pharmacy-extension," only subcategories "single source drug," "multiple source drug," "restrictive prescription," "erythropoietin (EPO) less than ten thousand units," "erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";

(gg) "Cast room," only subcategory "general classification";

(hh) "Recovery room," only subcategory "general classification";

(ii) "Labor room/delivery," only subcategory "general classification," "labor," "delivery," and "birthing center";

(jj) "EKG/ECG (Electrocardiogram)," only subcategories "general classification," "holter monitor," and "telemetry";

(kk) "EEG (Electroencephalogram)," only subcategory "general classification";

(ll) "Gastro-intestinal services," only subcategory "general classification";

(mm) "Treatment/observation room," only subcategories "general classification," "treatment room," and "observation room";

(nn) "Extra-corporeal shock wave therapy (formerly lithotripsy)," only subcategory "general classification";

(oo) "Inpatient renal dialysis," only subcategories "general classification," "inpatient hemodialysis," "inpatient peritoneal (non-CAPD)," "inpatient continuous ambulatory peritoneal dialysis (CAPD)," and "inpatient continuous cycling peritoneal dialysis (CCPD)";

(pp) "Acquisition of body components," only subcategories "general classification," "living donor," and "cadaver donor";

(qq) "Miscellaneous dialysis," only subcategory "ultra filtration";

(rr) "Other diagnostic services," only subcategories "general classification," "peripheral vascular lab," "electromyelogram," and "pregnancy test"; and

(ss) "Other therapeutic services," only subcategory "general classification."

(2) The agency pays for an inpatient hospital covered service in the following revenue code subcategories only when the hospital provider is approved by the agency to provide the specific service:

(a) "All-inclusive rate," only subcategory "all-inclusive room & board plus ancillary";

(b) "Room & board - Private (one bed)," only subcategory "psychiatric";

(c) "Room & board - Semi-private (two beds)," only subcategories "psychiatric," "((~~detoxification~~)) withdrawal management," "rehabilitation," and "other";

(d) "Room & board - Semi-private three and four beds," only subcategories "psychiatric" and "((~~detoxification~~)) withdrawal management";

(e) "Room & board - Deluxe private," only subcategory "psychiatric";

(f) "Room & board - Ward," only subcategories "general classification" and "((~~detoxification~~)) withdrawal management";

(g) "Room & board - Other," only subcategories "general classification" and "other";

(h) "Intensive care unit," only subcategory "psychiatric";

(i) "Coronary care unit," only subcategory "heart transplant";

(j) "Operating room services," only subcategories "organ transplant-other than kidney" and "kidney transplant";

(k) "Occupational therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate" and "evaluation or reevaluation";

(l) "Clinic," only subcategory "chronic pain clinic";

(m) "Ambulance," only subcategory "neonatal ambulance services";

(n) "Behavioral health treatment/services," only subcategory "electroshock treatment"; and

(o) "Behavioral health treatment/services - Extension," only subcategory "rehabilitation."

(3) The agency pays revenue code category "occupational therapy," subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation" when:

(a) A client is in an acute PM&R facility;

(b) A client is age twenty or younger; or

(c) The diagnosis code is listed in the agency's published billing instructions.

(4) The agency does not pay for inpatient hospital services in the following revenue code categories and subcategories:

(a) "All-inclusive rate," subcategory "all-inclusive room and board";

(b) "Room & board - Private (one bed)" subcategories "hospice," "((~~detoxification~~)) withdrawal management," "rehabilitation," and "other";

(c) "Room & board - Semi-private (two bed)," subcategory "hospice";

(d) "Room & board - Semi-private - (three and four beds)," subcategories "hospice," "rehabilitation," and "other";

(e) "Room & board - Deluxe private," subcategories "hospice," "((~~detoxification~~)) withdrawal management," "rehabilitation," and "other";

(f) "Room & board - Ward," subcategories "medical/surgical/gyn," "OB," "pediatric," "psychiatric," "hospice," "oncology," "rehabilitation," and "other";

(g) "Room & board - Other," subcategories "sterile environment," and "self care";

(h) "Nursery," subcategory "other nursery";

(i) "Leave of absence";

(j) "Subacute care";

(k) "Intensive care unit," subcategory "other intensive care";

(l) "Coronary care unit," subcategory "other coronary care";

(m) "Special charges";

(n) "Incremental nursing charge";

(o) "All-inclusive ancillary";

(p) "Pharmacy," subcategories "take home drugs," "experimental drugs," and "other pharmacy";

(q) "IV therapy," subcategory "other IV therapy";

(r) "Medical/surgical supplies and devices," subcategories "take home supplies," "prosthetic/orthotics devices," "oxygen - take home," and "other supplies/devices";

(s) "Oncology," subcategory "other oncology";

(t) "Durable medical equipment (other than renal)";

(u) "Laboratory," subcategories "renal patient (home)," and "other laboratory";

(v) "Laboratory pathology," subcategory "other laboratory - pathological";

(w) "Radiology - Diagnostic," subcategory "other radiology - diagnostic";

(x) "Radiology - Therapeutic," subcategory "other radiology - therapeutic";

(y) "Nuclear medicine," subcategory "other nuclear medicine";

(z) "CT scan," subcategory "other CT scan";

(aa) "Operating room services," subcategory "other operating room services";

(bb) "Anesthesia," subcategories "acupuncture," and "other anesthesia";

(cc) "Blood and blood components";

(dd) "Administration, processing and storage for blood and blood components," subcategory "other processing and storage";

(ee) "Other imaging services," subcategories "screening mammography," and "other imaging services";

(ff) "Respiratory services," subcategory "other respiratory services";

(gg) "Physical therapy," subcategory "other physical therapy";

(hh) "Occupational therapy," subcategory "other occupational therapy";

(ii) "Speech therapy - Language pathology," subcategory "other speech-language pathology";

(jj) "Emergency room," subcategories "EMTALA emergency medical screening services," "ER beyond EMTALA screening," and "other emergency room";

(kk) "Pulmonary function," subcategory "other pulmonary function";

(ll) "Audiology";

(mm) "Cardiology," subcategory "other cardiology";

(nn) "Ambulatory surgical care," subcategory "other ambulatory surgical care";

(oo) "Outpatient services," subcategory "other outpatient service";

(pp) "Clinic," subcategories "general classification," "dental clinic," "psychiatric clinic," "OB-gyn clinic," "pediatric clinic," "urgent care clinic," "family practice clinic," and "other clinic";

(qq) "Free-standing clinic";

(rr) "Osteopathic services";

(ss) "Ambulance," subcategories "general classification," "supplies," "medical transport," "heart mobile," "oxygen," "air ambulance," "pharmacy," "telephone transmission EKG," and "other ambulance";

(tt) "Home health (HH) skilled nursing";

(uu) "Home health (HH) medical social services";

(vv) "Home health (HH) - Aide";

(ww) "Home health (HH) - Other visits";

(xx) "Home health (HH) - Units of service";

(yy) "Home health (HH) - Oxygen";

(zz) "Magnetic resonance technology (MRT)," subcategory "other MRT";

(aaa) "Medical" "medical/surgical supplies - extension," subcategory "FDA investigational devices";

(bbb) "Home IV therapy services";

(ccc) "Hospice services";

(ddd) "Respite care";

(eee) "Outpatient special residence charges";

(fff) "Trauma response";

(ggg) "Cast room," subcategory "other cast room";

(hhh) "Recovery room," subcategory "other recovery room";

(iii) "Labor room/delivery," subcategories "circumcision" and "other labor room/delivery";

(jjj) "EKG/ECG (Electrocardiogram)," subcategory "other EKG/ECG";

(kkk) "EEG (Electroencephalogram)," subcategory "other EEG";

(lll) "Gastro-intestinal services," subcategory "other gastro-intestinal";

(mmm) "Specialty room - Treatment/observation room," subcategory "other specialty rooms";

(nnn) "Preventive care services";

(ooo) "Telemedicine";

(ppp) "Extra-corporeal shock wave therapy (formerly lithotripsy)," subcategory "other ESWT";

(qqq) "Inpatient renal dialysis," subcategory "other inpatient dialysis";

(rrr) "Acquisition of body components," subcategories "unknown donor," "unsuccessful organ search - donor bank charges," and "other donor";

(sss) "Hemodialysis - Outpatient or home";

(ttt) "Peritoneal dialysis - Outpatient or home";

(uuu) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home";

(vvv) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home";

(www) "Miscellaneous dialysis," subcategories "general classification," "home dialysis aid visit," and "other miscellaneous dialysis";

(xxx) "Behavioral health treatments/services," subcategories "general classification," "milieu therapy," "play therapy," "activity therapy," "intensive outpatient services - psychiatric," "intensive outpatient services - ((~~chemical dependency~~)) substance use disorder (SUD)," "community behavioral health program (day treatment)";

(yyy) "Behavioral health treatment/services" - (extension), subcategories "rehabilitation," "partial hospitalization - less intensive," "partial hospitalization - intensive," "individual therapy," "group therapy," "family therapy," "bio feedback," "testing," and "other behavioral health treatment/services";

(zzz) "Other diagnostic services," subcategories "general classification," "pap smear," "allergy test," and "other diagnostic service";

(aaaa) "Medical rehabilitation day program";

(bbbb) "Other therapeutic services," subcategories "recreational therapy," "cardiac rehabilitation," "drug rehabilitation," "alcohol rehabilitation," "complex medical equipment - routine," "complex medical equipment - ancillary," and "other therapeutic services";

(cccc) "Other therapeutic services - extension," subcategories "athletic training" and "kinesiotherapy";

(dddd) "Professional fees";

(eeee) "Patient convenience items"; and

(ffff) Revenue code categories and subcategories that are not identified in this section.

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-2400 Inpatient chronic pain management services. (1) The medicaid agency pays a hospital that is specifically approved by the agency to provide inpatient chronic pain management services, an all-inclusive per diem facility fee. The agency pays professional fees for chronic pain management services to performing providers under the agency's fee schedule.

(2) A client qualifies for inpatient chronic pain management services when all the following apply:

(a) The client has had pain for at least three months and has not improved with conservative treatment, including tests and therapies;

(b) At least six months have passed since a previous surgical procedure was done concerning the pain problem; and

(c) A client with active substance abuse must have completed a ((~~detoxification~~)) withdrawal management program, if appropriate, and must be free from drugs and/or alcohol for at least six months.

(3) The agency:

(a) Covers inpatient chronic pain management training to assist eligible clients to manage chronic pain.

(b) Pays for only one inpatient hospital stay, up to a maximum of twenty-one consecutive days, for chronic pain management training per a client's lifetime.

(c) Does not require prior authorization for chronic pain management services.

(d) Does not pay for services unrelated to the chronic pain management services that are provided during the client's inpatient stay, unless the hospital requests and receives prior authorization from the agency.

(4) All applicable claim payment adjustments for client responsibility, third party liability, medicare crossover, etc., apply to the agency.

AMENDATORY SECTION (Amending WSR 16-06-053, filed 2/24/16, effective 4/1/16)

WAC 182-550-2650 Base community psychiatric hospitalization payment method for medicaid and CHIP clients and nonmedicaid and non-CHIP clients. (1) Effec-

tive for dates of admission from July 1, 2005, through June 30, 2007, and in accordance with legislative directive, the agency implemented two separate base community psychiatric hospitalization payment rates, one for medicaid and children's health insurance program (CHIP) clients and one for nonmedicaid and non-CHIP clients. Effective for dates of admission on and after July 1, 2007, the base community psychiatric hospitalization payment method for medicaid and CHIP clients and nonmedicaid and non-CHIP clients is no longer used. (For the purpose of this section, a "nonmedicaid or non-CHIP client" is defined as a client eligible under the medical care services (MCS) program, as determined by the agency.)

(a) The medicaid base community psychiatric hospital payment rate is a minimum per diem for claims for psychiatric services provided to medicaid and CHIP covered patients, paid to hospitals that accept commitments under the Involuntary Treatment Act (ITA).

(b) The nonmedicaid base community psychiatric hospital payment rate is a minimum allowable per diem for claims for psychiatric services provided to indigent patients paid to hospitals that accept commitments under the ITA.

(2) For the purposes of this section, "allowable" means the calculated allowed amount for payment based on the payment method before adjustments, deductions, or add-ons.

(3) To be eligible for payment under the base community psychiatric hospitalization payment method:

(a) A client's inpatient psychiatric voluntary hospitalization must:

(i) Be medically necessary as defined in WAC 182-500-0070. In addition, the agency considers medical necessity to be met when:

(A) Ambulatory care resources available in the community do not meet the treatment needs of the client;

(B) Proper treatment of the client's psychiatric condition requires services on an inpatient basis under the direction of a physician;

(C) The inpatient services can be reasonably expected to improve the client's condition or prevent further regression so that the services will no longer be needed; and

(D) The client, at the time of admission, is diagnosed as having an emotional/behavioral disturbance as a result of a mental disorder as defined in the current published Diagnostic and Statistical Manual of the American Psychiatric Association. The agency does not consider ((~~detoxification~~)) withdrawal management to be psychiatric in nature.

(ii) Be approved by the professional in charge of the hospital or hospital unit.

(iii) Be authorized by the appropriate division of behavioral health and recovery (DBHR) designee prior to admission for covered diagnoses.

(iv) Meet the criteria in WAC 182-550-2600.

(b) A client's inpatient psychiatric involuntary hospitalization must:

(i) Be in accordance with the admission criteria in chapters 71.05 and 71.34 RCW.

(ii) Be certified by a DBHR designee.

(iii) Be approved by the professional in charge of the hospital or hospital unit.

(iv) Be prior authorized by the ((~~behavioral health organization (BHO)~~)) agency or ((~~its~~)) the agency's designee.

(v) Meet the criteria in WAC 182-550-2600.

(4) Payment for all claims is based on covered days within a client's approved length of stay (LOS), subject to client eligibility and agency-covered services.

(5) The medicaid base community psychiatric hospitalization payment rate applies only to a medicaid or CHIP client admitted to a nonstate-owned free-standing psychiatric hospital located in Washington state.

(6) The nonmedicaid base community psychiatric hospitalization payment rate applies only to a nonmedicaid or CHIP client admitted to a hospital:

(a) Designated by the agency as an ITA-certified hospital; or

(b) That has an agency-certified ITA bed that was used to provide ITA services at the time of the nonmedicaid or non-CHIP admission.

(7) For inpatient hospital psychiatric services provided to eligible clients for dates of admission on and after July 1, 2005, through June 30, 2007, the agency pays:

(a) A hospital's department of health (DOH)-certified distinct psychiatric unit as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using the agency-specific nondiagnosis related group (DRG) payment method.

(ii) For nonmedicaid and non-CHIP clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-administered program DRG allowable (including the high cost outlier allowable, if applicable), or the agency-specified non-DRG payment method if no relative weight exists for the DRG in the agency's payment system; or

(B) The nonmedicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(b) A hospital without a DOH-certified distinct psychiatric unit as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using:

(A) The DRG payment method; or

(B) The agency-specified non-DRG payment method if no relative weight exists for the DRG in the agency's payment system.

(ii) For nonmedicaid and CHIP clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-administered program DRG allowable (including the high cost outlier allowable, if applicable), or the agency-specified non-DRG payment method if no relative weight exists for the DRG in the agency's payment system; or

(B) The nonmedicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(c) A nonstate-owned free-standing psychiatric hospital as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using as the allowable, the greater of:

(A) The ratio of costs-to-charges (RCC) allowable; or

(B) The medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(ii) For nonmedicaid and non-CHIP clients, inpatient hospital psychiatric services are paid the same as for medicaid and CHIP clients, except the base community inpatient psychiatric hospital payment rate is the nonmedicaid rate, and the RCC allowable is the state-administered program RCC allowable.

(d) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the certified public expenditure (CPE) payment program, as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using the methods identified in WAC 182-550-4650.

(ii) For nonmedicaid and non-CHIP clients, inpatient hospital psychiatric services are paid using the methods identified in WAC 182-550-4650 in conjunction with the nonmedicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(e) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the critical access hospital (CAH) program, as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using the agency-specified non-DRG payment method.

(ii) For nonmedicaid and non-CHIP clients, inpatient hospital psychiatric services are paid using the agency-specified non-DRG payment method.

AMENDATORY SECTION (Amending WSR 19-04-004, filed 1/23/19, effective 3/1/19)

WAC 182-550-3000 Payment method. (1) The medicaid agency uses the diagnosis-related group (DRG) payment method to pay for covered inpatient hospital services, except as specified in WAC 182-550-4300 and 182-550-4400.

(2) The agency assigns a DRG code to each claim for an inpatient hospital stay using 3M™ software (AP-DRG or APR-DRG) or other software currently in use by the agency. That DRG code determines the method used to pay claims for prospective payment system (PPS) hospitals. For the purpose of this section, PPS hospitals include all in-state and border area hospitals, except both of the following:

(a) Critical access hospitals (CAH), which the agency pays per WAC 182-550-2598; and

(b) Military hospitals, which the agency pays using the following payment methods depending on the revenue code billed by the hospital:

(i) Ratio of costs-to-charges (RCC); and

(ii) Military subsistence per diem.

(3) For each DRG code, the agency establishes an average length of stay (ALOS). The agency may use the DRG ALOS as part of its authorization process and payment methods as specified in this chapter.

(4) An inpatient claim payment includes all hospital covered services provided to a client during days the client is eligible. This includes, but is not limited to:

(a) The inpatient hospital stay;

(b) Outpatient hospital services, including preadmission, emergency department, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital stay. These outpatient services must be billed on the inpatient hospital claim;

(c) Any hospital covered service for which the admitting hospital sends the client to another facility or provider during the client's inpatient hospital stay, and the client returns as an inpatient to the admitting hospital.

(5) The agency's claim payment for an inpatient stay is determined by the payment method. The agency pays hospitals for inpatient hospital covered services provided to clients using the following methods:

Payment Method	General Description of Payment Formula	WAC Reference
DRG (Diagnostic Related Group)	DRG specific relative weight times hospital specific DRG rate times maximum service adjustor	182-550-3000
Per Diem	Hospital-specific daily rate for the service (psych, rehab, ((~~detox~~)) withdrawal management, or CUP) times covered allowable days	182-550-2600 and 182-550-3381
Fixed Per Diem for Long Term Acute Care (LTAC)	Fixed LTAC rate per day times allowed days plus ratio of cost to charges times allowable covered ancillaries not included in the daily rate	182-550-2595 and 182-550-2596
Ratio of Costs-to-Charges (RCC)	RCC times billed covered allowable charges	182-550-4500
Cost Settlement with Ratio of Costs-to-Charges	RCC times billed covered allowable charges (subject to hold harmless and other settlement provisions of the Certified Public Expenditure program)	182-550-4650 and 182-550-4670
Cost Settlement with Weighted Costs-to-Charges (WCC)	WCC times billed covered allowable charges subject to Critical Access Hospital settlement provisions	182-550-2598
Military	Depending on the revenue code billed by the hospital: • RCC times billed covered allowable charges; and • Military subsistence per diem.	182-550-4300
Administrative Day	Standard administrative day rate times days authorized by the agency combined with RCC times ancillary charges that are allowable and covered for administrative days	182-550-3381

(6) For claims paid using the DRG method, the payment may not exceed the billed amount.

(7) The agency may adjust the initial allowable calculated for a claim when one or more of the following occur:

(a) A claim qualifies as a high outlier (see WAC 182-550-3700);

(b) A claim is paid by the DRG method and a client transfers from one acute care hospital or distinct unit per WAC 182-550-3600;

(c) A client is not eligible for a Washington apple health program on one or more days of the hospital stay;

(d) A client has third-party liability coverage at the time of admission to the hospital or distinct unit;

(e) A client is eligible for Part B medicare, the hospital submitted a timely claim to medicare for payment, and medicare has made a payment for the Part B hospital charges;

(f) A client is discharged from an inpatient hospital stay and, within fourteen calendar days, is readmitted as an inpatient to the same hospital or an affiliated hospital. The agency or the agency's designee performs a retrospective utilization review (see WAC 182-550-1700) on the initial admission and all readmissions to determine which inpatient hospital stays qualify for payment. The review may determine:

(i) If both admissions qualify for separate reimbursement;

(ii) If both admissions must be combined to be reimbursed as one payment; or

(iii) Which inpatient hospital stay qualifies for individual payment.

(g) A readmission is due to a complication arising from a previous admission (e.g., provider preventable condition described in WAC 182-502-0022). The agency or the agency's designee performs a retrospective utilization review to determine if both admissions are appropriate and qualify for individual payments; or

(h) The agency identifies an enhanced payment due to a provider preventable condition, hospital-acquired condition, serious reportable event, or a condition not present on admission.

(8) In response to direction from the legislature, the agency may change any one or more payment methods outlined in chapter 182-550 WAC for the purpose of achieving the legislature's targeted expenditure levels. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the agency in the Biennial Appropriations Act. In response to this legislative direction, the agency may calculate an adjustment factor (known as an "inpatient adjustment factor") to apply to inpatient hospital rates.

(a) The inpatient adjustment factor is a specific multiplier calculated by the agency and applied to existing inpatient hospital rates to meet targeted expenditure levels as directed by the legislature.

(b) The agency will apply the inpatient adjustment factor when the agency determines that its expenditures on inpatient hospital rates will exceed the legislature's targeted expenditure levels.

(c) The agency will apply any such inpatient adjustment factor to each affected rate.

(9) The agency does not pay for a client's day of absence from the hospital.

(10) The agency pays an interim billed hospital claim for covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 182-550-2900.

(11) The agency applies to the allowable for each claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(12) The agency pays hospitals in designated bordering cities for allowed covered services as described under WAC 182-550-3900.

(13) The agency pays out-of-state hospitals for allowed covered services as described under WAC 182-550-4000.

(14) The agency's annual aggregate payments for inpatient hospital services, including payments to state-operated hospitals, will not exceed the estimated amounts that the agency would have paid using medicare payment principles.

(15) When hospital ownership changes, the agency's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(16) Hospitals participating in the apple health program must annually submit to the agency:

(a) A copy of the hospital's CMS medicare cost report (Form 2552 version currently in use by the agency) that is the official "as filed" cost report submitted to the medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 182-550-4900 for the requirements for a hospital to qualify for a DSH payment.

(17) Reports referred to in subsection (16) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by the agency.

(18) The agency requires hospitals to follow generally accepted accounting principles.

(19) Participating hospitals must permit the agency to conduct periodic audits of their financial records, statistical records, and any other records as determined by the agency.

(20) The agency limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

(21) ((~~For a client's hospital stay that involves regional support network (RSN)-approved voluntary inpatient or involuntary inpatient hospitalizations, the hospital must bill the agency for payment. When the hospital contracts directly with the RSN, the hospital must bill the RSN for payment.~~

~~(22)~~)) For psychiatric hospitals and psychiatric hospital units, when a claim groups to a DRG code that pays by the DRG method, the agency may manually price the claim at the hospital's psychiatric per diem rate.

AMENDATORY SECTION (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

WAC 182-550-4300 Hospitals and units exempt from the DRG payment method. (1) Except when otherwise specified, inpatient services provided by hospitals and units that are exempt from the diagnosis-related group (DRG) payment method are paid under the ratio of costs-to-charges (RCC) payment method described in WAC 182-550-4500, the per diem payment method described in WAC 182-550-3000, the per case rate payment method described in WAC 182-550-3000, or other payment methods identified in this

chapter (e.g., long term acute care (LTAC), certified public expenditure (CPE), critical access hospital (CAH), etc.). Inpatient services provided by hospitals and units are exempt from the DRG payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) The agency exempts the following hospitals, units, and services from the DRG payment method for inpatient services provided to clients eligible for Washington apple health:

(a) Hospitals participating in the agency's certified public expenditure (CPE) payment program (see WAC 182-550-4650);

(b) Hospitals participating in the agency's critical access hospital program (see WAC 182-550-2598);

(c) Rehabilitation services. All rehabilitation services are paid through the per diem payment method except as indicated in (a), (b), and (d) of this subsection (see WAC 182-550-3000);

(d) Military hospitals when no other specific arrangements have been made with the agency. The agency, or the military hospital, may elect or arrange for one of the following payment methods in lieu of the RCC payment method:

(i) Per diem payment method; or

(ii) DRG payment method; and

(e) Psychiatric services. All psychiatric services are paid through the per diem payment method except as indicated in (a), (b), and (d) of this subsection (see WAC 182-550-3000). ((~~A mental health~~)) An agency designee that arranges to directly pay a hospital and/or a designated distinct psychiatric unit of a hospital may use the agency's payment methods or contract with the hospital to pay using different methods. ((~~Claims not paid directly through a mental health designee are paid through the agency's payment system.~~))

(3) Inpatient psychiatric services, Involuntary Treatment Act services, and ((~~detoxification~~)) withdrawal management services provided in out-of-state hospitals are not covered or paid by the agency or the agency's ((~~mental health~~)) designee. The agency does not cover or pay for other hospital services provided to clients eligible for those services in the following programs, when the services are provided in out-of-state hospitals that are not in designated bordering cities:

(a) Medical care services; and

(b) Other state-administered programs.

(4) The agency has established an average length of stay (ALOS) for each DRG classification and publishes it on the agency's website. The agency uses the DRG ALOS as a benchmark to authorize and pay inpatient hospital stays exempt from the DRG payment method. When an inpatient hospital stay exceeds the agency's DRG ALOS benchmark or prior authorized LOS:

(a) For a psychiatric inpatient stay, the hospital must obtain approval for additional days beyond the prior authorized days from the ((~~division of behavioral health and recovery (DBHR)~~)) agency or the ((~~mental health~~)) agency's designee who prior authorized the admission. See WAC 182-550-2600;

(b) For an acute physical medicine and rehabilitation (PM&R) or a long term acute care (LTAC) stay, the hospital must obtain approval for additional days beyond the prior authorized days from the agency unit that prior authorized the admission. See WAC 182-550-2561 and 182-550-2590;

(c) For an inpatient hospital stay for ((~~detoxification~~)) withdrawal management for a chemical using pregnant (CUP) client, see WAC 182-550-1100;

(d) For other medical inpatient stays for ((~~detoxification~~)) withdrawal management, see WAC 182-550-1100 and subsection (5) of this section;

(e) For an inpatient stay in a certified public expenditure (CPE) hospital, see WAC 182-550-4690; and

(f) For an inpatient hospital stay not identified in (a) through (e) of this subsection, the agency may perform retrospective utilization review to determine if the LOS was medically necessary and at the appropriate level of care.

(5) If subsection (4)(d) of this section applies to an eligible client, the agency will:

(a) Pay for three-day ((~~detoxification~~)) withdrawal management services for an acute alcoholic condition; or

(b) Pay for five-day ((~~detoxification~~)) withdrawal management services for acute drug addiction when the services are directly related to ((~~detoxification~~)) withdrawal management; and

(c) If WAC 182-550-1100 (5)(b) applies, extend the three- and five-day limitations when the following are true:

(i) The days are billed as covered;

(ii) A medical record is submitted with the claim;

(iii) The medical record clearly documents that the days are medically necessary; and

(iv) The level of care is appropriate according to WAC 182-550-2900.

AMENDATORY SECTION (Amending WSR 19-04-004, filed 1/23/19, effective 3/1/19)

WAC 182-550-4400 Services—Exempt from DRG payment. (1) Inpatient services are exempt from the diagnosis-related group (DRG) payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) Subject to the restrictions and limitations in this section, the agency exempts the following services for medicaid and CHIP clients from the DRG payment method. This policy also applies to covered services paid through medical care services (MCS) and any other state-administered program, except when otherwise indicated in this section. The exempt services are:

(a) ((~~Alcohol or other drug detoxification~~)) Withdrawal management services when provided in a hospital having a ((~~detoxification~~)) withdrawal management provider agreement with the agency to perform these services.

(b) Hospital-based intensive inpatient ((~~detoxification~~)) withdrawal management, medical stabilization, and drug treatment services provided to chemical-using pregnant (CUP) women by a certified hospital. These are medicaid program services and are not covered or funded by the agency through MCS or any other state-administered program.

(c) Acute physical medicine and rehabilitation (acute PM&R) services.

(d) Psychiatric services. ((~~A mental health~~)) An agency designee that arranges to pay a hospital directly for psychiatric services may use the agency's payment methods or contract with the hospital to pay using different methods. ((~~Claims not paid directly through a mental health designee are paid through the agency's payment system.~~))

(e) Chronic pain management treatment provided in a hospital approved by the agency to provide that service.

(f) Administrative day services. The agency pays administrative days for one or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate. The administrative day rate is based on the statewide average daily medicaid nursing facility rate, which is adjusted annually. The agency may designate part of a client's stay to be paid an administrative day rate upon review of the claim or the client's medical record, or both.

(g) Inpatient services recorded on a claim grouped by the agency to a DRG for which the agency has not published an all-patient DRG (AP-DRG) or all-patient refined DRG (APR-DRG) relative weight. The agency will deny payment for claims grouped to DRG 469, DRG 470, APR DRG 955, or APR DRG 956.

(h) Organ transplants that involve heart, intestine, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, pancreas, or simultaneous kidney/pancreas. The agency pays hospitals for these organ transplants using the ratio of costs-to-charges (RCC) payment method. The agency maintains a list of DRGs which qualify as transplants on the agency's website.

WSR 21-11-095
EXPEDITED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed May 19, 2021, 9:03 a.m.]

Title of Rule and Other Identifying Information: Chapter 220-460 WAC, Commercial whale watching.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2019, state law was adopted creating the commercial whale watching licenses ~~in 2019~~ (2SSB 5577). In 2020, the Washington department of fish and wildlife (WDFW) completed the rule-making process directed in the legislation which resulted in the creation of chapter 220-460 WAC on the commercial whale watching license and rules applicable to license holders.

The Washington state legislature amended the statute through bill ESB 5330 in the 2021 legislative session. The bill changes the commercial whale watching license structure: It separates business licenses from operator licenses, eliminates the "designated" and "alternate" operator distinctions, and creates a separate license for motorized commercial whale watching operators and nonmotorized tour operators (e.g. kayak guides). The bill also exempts Canadian businesses from needing proof of authorization to do business in Washington (i.e. providing a Unified Business Identifier, UBI) and Canadian individuals from the residency requirement in RCW 77.65.040. The bill also modifies the fee structure and waives fees for 2021 and 2022.

The intent now is to (1) adopt content explicitly directed in Washington state statute by updating and aligning the definitions and language in chapter 220-460 WAC with the 2021 amendments to RCW 77.65.615; and (2) correct typographical errors and clarify language of the rule without changing its effect.

Reasons Supporting Proposal: The statutory changes enacted by ESB 5330 (2021) require changes in chapter 220-460 WAC for consistency and clarity. This rule proposal intends to update the rules to align with state law and make typographical changes to clarify the existing rule language.

Statutory Authority for Adoption: RCW 77.65.615.

Statute Being Implemented: RCW 77.65.615, 77.65.620.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Julie Watson, Olympia, Washington, 360-790-4528; Implementation: Peter Vernie, Olympia, Washington, 360-902-2302; and Enforcement: Captain Alan Myers, Olympia, Washington, 360-489-5715.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making is appropriate because ESB 5330 (2021) included an emergency clause and was enacted immediately upon signature of the governor. Chapter 220-460 WAC implements this state law, RCW 77.65.615, and these revisions have an urgent and immediate effect on both license holders and WDFW, the entity responsible for providing licenses and enforcing requirements for license holders. This proposal incorporates state statute requirements without material change, corrects typographical errors, and adds clarifying language without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Annie Szvetecz, WDFW, P.O. Box 43200, Olympia, WA 98501-3200, phone 360-480-6536, fax 360-902-2155, email rules.coordinator@dfw.wa.gov, AND RECEIVED BY July 19, 2021.

May 19, 2021
Annie Szvetecz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-010 Definitions. For the purposes of this chapter, the following definitions apply:

(1) **Commercial whale watching.**

"Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a vessel or guided kayak tour in order to view marine mammals in their natural habitat for a fee.

(2) **Commercial whale watching ((~~designated primary operator~~)) business.**

"Commercial whale watching ((~~designated primary operator" shall be defined as the person identified on the application to operate the commercial whale watching vessel on behalf of the whale watching business.~~

~~(3) **Commercial whale watching alternate operator.**~~

~~"Alternate operators" shall be defined as individuals besides the designated primary operator who are designated to operate the vessel on behalf of the whale watching business.~~

~~(4) **Commercial whale watching vessel operators.**~~

~~"Commercial whale watching vessel operators" shall be defined to include operators of commercial vessels and kayak rentals that are engaged in the business of commercial whale watching. The term "operators" shall be used to identify primary operators and alternate operators who conduct commercial whale watching tours, including operators who direct the movement or positioning of any nonmotorized commercial whale watching vessels involved in a tour.~~

~~(5)~~)) business" means a business that engages in the activity of commercial whale watching.

(3) **Commercial whale watching operator.**

"Commercial whale watching operator" means a person who operates a motorized or sailing vessel engaged in the business of whale watching.

(4) **Kayak guide.**

"Kayak guide" means a person who conducts guided kayak tours on behalf of a commercial whale watching business. The term kayak guide includes anyone who directs the movement or positioning of any nonmotorized commercial whale watching vessel(s) involved in a tour.

(5) **Commercial whale watching license.**

"Commercial whale watching license" means a commercial whale watching business license, a commercial whale watching operator license, or a kayak guide license as defined in this section.

(a) "Commercial whale watching business license" means a department-issued license to operate a commercial whale watching business.

(b) "Commercial whale watching operator license" means a department-issued license to operate a commercial motorized or sailing vessel on behalf of a commercial whale watching business.

(c) "Kayak guide license" means a department-issued license to conduct commercial guided kayak tours on behalf of a commercial whale watching business.

(6) **Commercial whale watching vessel.**

"Commercial whale watching vessel" ((~~shall be defined as~~)) means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

"Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water.

(a) "Motorized commercial whale watching vessel" shall be defined as any vessel with an engine being used as a means of transportation for individuals to engage in commercial whale watching, regardless of whether the engine is in use. This definition includes sailboats with inboard or outboard motors.

(b) "Nonmotorized commercial whale watching vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in commercial whale watching. This definition includes human-powered watercraft such as kayaks and paddleboards. In this chapter, the terms "kayak," "kayak guide," and "kayak tour" encompass any nonmotorized vessels used for whale watching.

((~~(6)~~)) (7) **Group of southern resident killer whales.**

"Group of southern resident killer whales" is defined as a single southern resident killer whale or an assemblage of southern resident killer whales wherein each member is within one nautical mile of at least one other southern resident killer whale. Any individual(s) farther than one nautical mile constitutes a separate group.

((~~(7)~~)) (8) **Vicinity.**

"Vicinity" is defined as one-half nautical mile from all southern resident killer whales in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident killer whale closer than the statutorily defined distances in RCW 77.15.740.

((~~(8)~~)) (9) **Vicinity instance.** Each time any commercial whale watching vessel operating under a license enters within one-half nautical mile of a southern resident killer whale will count as one vicinity instance associated with that license.

((~~(9)~~)) (10) **Automatic identification system (AIS).** AIS refers to a maritime navigation safety communications system standardized by the International Telecommunication Union, adopted by the International Maritime Organization, that:

(a) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(b) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(c) Exchanges data with shore-based facilities.

((~~(10)~~)) (11) **Inland waters of Washington.**

"Inland waters of Washington" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 3/1/2021)

WAC 220-460-020 Commercial whale watching licenses—Application process and deadline. (1) A commercial whale watching license is required for commercial whale watching businesses, motorized and sailing vessel((~~, sailboat~~)) operators, and kayak ((~~operators~~)) guides.

(2) Applicants must be at least sixteen years of age and possess a driver's license or other government-issued identification number and jurisdiction of issuance.

(3) Applicants for a commercial whale watching business license must be authorized to conduct business within the state of Washington. However, the residency and business requirements of RCW 77.65.040 (2) and (3) do not apply to Canadian individuals or corporations applying for and holding Washington commercial whale watching licenses.

(4) The commercial whale watching business license application must include the following information regarding the whale watching business:

(a) The applicant must identify the whale watching business((~~: Business~~)) name, type of business (i.e., sole proprietor, partnership, corporation), and for all associated business owner(s)((~~,~~)): Full name(((~~s~~))), ((~~physical address, mailing address~~)) association to the business, email address, telephone number, and Social Security number((~~s of all~~)) if the business owner((~~s~~)) is a United States citizen or resident.

(b) The applicant must identify and confirm the whale watching business is registered to conduct business within the state by providing the unified business identifier (UBI) number. Canadian commercial whale watching businesses are exempt from this requirement.

(5) The commercial whale watching business license applicant must also designate ((~~an~~)) all commercial whale watching operators ((~~for each~~)) authorized to operate a motorized or sailing vessel ((~~or kayak engaging in whale watching activity.~~)) and all kayak guides authorized to guide a kayak tour on behalf of the business. The applicant must identify the operator's ((~~name of the associated business,~~)) or kayak guide's full name((~~,~~)) and date of birth((~~, Social Security number, gender, hair, eyes, weight, height, physical address, mailing address, email address, and telephone number~~)).

(6) On the commercial whale watching business license application, the applicant must designate all commercial whale watching vessels to be used while engaging in commercial whale watching.

(a) The applicant must indicate either motorized or sailing vessels or kayaks on the application.

(((~~a~~))) (b) If motorized or sailing vessels are selected, then the applicant must select the appropriate option for the passenger capacity on the designated vessel.

(((~~(b) If kayak is selected, then the applicant must select the appropriate option for the number of kayaks engaging in whale watching activities.~~

~~(7) The applicant may designate alternate operators to be listed on the whale watching license.~~)) (7) Commercial whale watching operator license applicants and kayak guide license applicants must provide their full name, date of birth, Social Security number (U.S. citizens and residents only), gender, hair, eyes, weight, height, physical address, mailing address, email address, and telephone number.

(8) An application submitted to the department shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(9) Applications must be completed and submitted online through the department-provided commercial licensing system, or by mailing the application to:

Washington Department of Fish and Wildlife
Attn: Commercial License Sales
P.O. Box 43154
Olympia, WA 98504-3154

(10) If the required fields are blank or omitted from the application, then the department will consider the application to be incomplete, and it will not be processed.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-040 Commercial whale watching licensing business organizations—Operator designation. (1) Any person that holds a commercial whale watching business license ((~~and is a business organization~~)) may designate other persons associated with the business to act on behalf of the license holder to update the business information within the organization's account ((~~and/or operate a designated vessel~~)).

(2) ((~~In addition to the designated operator,~~)) A commercial whale watching business license holder ((~~that is a business organization~~)) may designate an unlimited number of ((~~alternate~~)) operators or kayak guides, so long as each individual obtains the license required under WAC 220-460-070.

(3) A commercial whale watching business license holder ((~~that is a business organization may substitute the designated operator by surrendering the whale watching license card, redesignating the operator under the criteria provided in this section and paying the replacement license fee provided in RCW 77.65.050~~)) must maintain an accurate record with the department of operators authorized to operate motorized vessels and kayak guides authorized to guide kayak tours on behalf of the business. Commercial whale watching business license holders may add operators and kayak guides to the list associated with the business license by entering the operator's or kayak guide's full name and date of birth in the business account through the commercial licensing system.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-050 Whale watching vessel designation requirements. (1) RCW 77.65.615 requires commercial whale watching ((~~operators~~)) businesses to designate the motorized vessel(s) ((~~to~~)) and indicate if kayaks will be used for commercial whale watching ((~~tours~~)). It is unlawful to engage in commercial whale watching activities unless:

(a) The licensee has designated all commercial whale watching motorized, including sailing, vessels to be used,

((~~regardless if using a motorized or sailing vessel, or~~)) and has designated if kayaks ((~~to guide tours~~)) will be used;

(b) The department has issued a commercial license to the licensee showing the motorized vessel or kayaks so designated; and

(c) The person conducting commercial whale watching activities on behalf of the business has the appropriate documentation in physical possession.

(i) The operator of a motorized or sailing vessel ((~~operator has~~)) must have both the commercial whale watching business license listing the vessel and their individual operator license for the current calendar year in physical possession.

(ii) The guide of a commercial kayak tour must have their individual kayak guide license in physical possession and must have either the commercial whale watching business license for the current calendar year or a printed or digital scan thereof.

(2) The licensee does not have to own the vessel being designated on the license.

(3) For motorized or sailing vessels, the commercial whale watching business licensee must provide applicable documentation numbers such as a hull identification number (HIN), current United States Coast Guard or Transport Canada certification inspection documentation ((~~which allows the designated vessel to carry more than six passengers~~)), and/or a vessel registration number.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-060 Whale watching vessel substitutions—Fees. The holder of a commercial whale watching business license may add or substitute ((~~the~~)) a vessel designated on the license ((~~or designate a vessel if none has previously been designated~~)) within the calendar year if the license holder:

(1) Surrenders the previously issued license to the department;

(2) Submits to the department a substitution application and application fee that identifies the currently assigned vessel, and the vessel proposed to be designated; and

(3) Submits vessel substitution fees corresponding to the size of the vessel.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-070 Whale watching ((~~alternate~~)) operator and kayak guide license requirements. (1) A person ((~~who is not the license holder~~)) may operate a motorized or sailing vessel designated on the commercial whale watching business license only if:

(a) The person holds a valid commercial whale watching ((~~alternate~~)) operator license issued from the department; ((~~and~~))

(b) The ((~~alternate~~)) operator is designated on the underlying commercial whale watching business license; and

(c) The person has both the commercial whale watching business license listing the vessel and their individual operator license for the current calendar year in physical possession.

(2) A person may lead a guided kayak tour on behalf of the commercial whale watching business only if:

(a) The person holds a valid kayak guide license issued from the department;

(b) The kayak guide is designated on the underlying commercial whale watching business license; and

(c) The person has their individual kayak guide license in physical possession and must have either the commercial whale watching business license for the current calendar year or a printed or digital scan thereof.

((~~(2)~~)) (3) Only an individual at least sixteen years of age may hold an ((~~alternate~~)) operator license or kayak guide license.

((~~(3) Commercial whale watching license holders must maintain an accurate record with the department of designated alternate operators. The commercial whale watching license holder must confirm the utilization of a whale watching alternate operator and identify the alternate by entering the alternate's full name and date of birth in the business account through the commercial licensing system.~~))

(4) An individual may hold only one ((~~alternate~~)) commercial whale watching operator license. Holders of an ((~~alternate~~)) operator license may be designated on an unlimited number of commercial whale watching business licenses.

(5) An individual may hold only one kayak guide license. Holders of a kayak guide license may be designated on an unlimited number of commercial whale watching business licenses.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-090 Commercial whale watching of southern resident killer whales—General. (1) It is unlawful for ((~~an operator of~~)) a commercial whale watching ((~~vessel~~)) operator or kayak guide to violate any of the restrictions in RCW 77.15.740.

(2) A commercial whale watching license is not an exemption under RCW 77.15.740 (2)(c).

(3) The rules and requirements outlined in this chapter regarding southern resident killer whales apply to commercial whale watching activity in the inland waters of Washington.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-100 Areas closed to commercial whale watching. (1) It is unlawful for operators of motorized commercial whale watching vessels to operate one-quarter nautical mile from shore from Mitchell Point to Cattle Point on the west side of San Juan Island or within one-half nautical mile of Lime Kiln Point State Park. ((~~Operators of nonmotorized commercial whale watching vessels~~)) Kayak guides and all vessels on guided kayak tours must stay within one hundred yards of shore within this zone except when safety conditions preclude it.

(2) Modifications or additions to closed areas may be issued by the department by rule. Violation of such rules shall be unlawful.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-120 Time limitations on watching southern resident killer whales. (1) It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale between October 1st and June 30th.

(2) It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale outside these time periods: 10:00 a.m. to 12:00 p.m. and 3:00 p.m. to 5:00 p.m. from July 1st through September 30th.

(3) If any motorized commercial whale watching vessel designated under a commercial whale watching business license enters within the vicinity of a southern resident killer whale between 10:00 a.m. and 12:00 p.m., no vessels operating under that business license may enter the vicinity of a southern resident killer whale after 12:00 p.m. on the same day.

(4) If an operator of a motorized commercial whale watching vessel enters within one-half nautical mile of a group of killer whales outside of the provisions in this section, after taking reasonable measures to determine whether the killer whales were southern resident killer whales, and then identifies the whales as southern resident killer whales, the operator must:

(a) Immediately safely reposition the vessel to be one-half nautical mile or farther from the southern resident killer whales.

(b) Immediately after repositioning the vessel, report the location of the southern resident killer whale(s) to the WhaleReport application for the whale report alert system (WRAS), or to a successor transboundary notification system designated by the department that is adopted by the international shipping community in the Salish Sea.

(c) Accurately log the incident, including measures taken to determine whether the whales were southern resident killer whales, following the provisions of WAC 220-460-140 and submit the log to the department within twenty-four hours of the incident.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-130 Nonmotorized commercial whale watching vessels. (1) Tours involving any nonmotorized watercraft used for the purposes of commercial whale watching, such as kayaks, are subject to these requirements. Such watercraft constitute commercial whale watching vessels and are referred to as "vessels" in this chapter. Regardless of the type of nonmotorized watercraft involved, the person operating on behalf of the business to conduct the tour is referred to as a "kayak guide" in this chapter.

(2) ((~~Operators~~)) Kayak guides must prevent all vessels in their tour group from disturbing southern resident killer whales. All vessels in the tour group must adhere to the following requirements:

(a) It is unlawful to launch if southern resident killer whales are within one-half nautical mile of the launch location.

(b) Vessels are prohibited from being paddled, positioned, or waiting in the path of a southern resident killer whale. If a southern resident killer whale is moving towards a vessel, the vessel must immediately be moved out of the path of the whale.

(c) If a vessel or vessels inadvertently encounter a southern resident killer whale, they must immediately be moved as close to shore as possible and secured, or be rafted up close to shore or in a kelp bed, and paddling shall cease until any and all killer whales have moved to at least four hundred yards away from the vessels. Rafting up is defined as manually holding vessels close together, maintaining a tight grouping.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 5/1/21)

WAC 220-460-140 Commercial whale watching compliance and reporting. (1) An automatic identification system (AIS) must be fitted aboard all motorized commercial whale watching vessels. The AIS must be capable of providing information about the vessel (including the vessel's identity, type, position, course, speed, and navigational status) to state and federal authorities automatically. Operators must maintain the AIS in operation at all times that the vessel is ((~~on a commercial whale watching tour~~)) conveying passengers for a fee.

(2) All ((~~motorized and nonmotorized~~)) commercial whale watching license holders ((~~and alternate operators~~)) must complete annual training from the department on marine mammals, distances on the water, impacts of whale watching on marine mammals, and southern resident killer whale-related rules and reporting.

(a) At completion of training, license holders must demonstrate adequate understanding of course materials.

(b) It is unlawful ((~~for an operator~~)) to operate a commercial whale watching vessel or guide a tour of nonmotorized vessels without completing the training for the current calendar year.

(c) Naturalists and others who work upon commercial whale watching vessels but are not license holders are encouraged to ((~~attend~~)) participate in the annual training.

(3) All ((~~motorized and nonmotorized~~)) commercial whale watching license holders shall maintain accurate logs on each instance a vessel operating under a license enters within one-half nautical mile vicinity of southern resident killer whales and submit copies of the logs to the department.

(a) Logs must include business license holder name; vessel operator ((~~and~~)) or kayak guide name; other staff names and roles; vessel name; port(s) of departure; departure time(s); return time(s); number of passengers; location(s) (Lat/Long) of southern resident killer whales encountered; time(s) entering and departing the one-half nautical mile vicinity of southern resident killer whales; time(s) entering and departing within four hundred yards of southern resident killer whales; and qualitative details of southern resident

killer whale encounters including whale identification, whale behavior and health, other vessel behavior, and any operator behavior, including contact with other boaters or government entities, and resulting outcomes.

(b) Information from the logs shall be submitted to the department on the following schedule:

(i) All vicinity instances in July must be reported by August 15th.

(ii) All vicinity instances in August must be reported by September 15th.

(iii) All vicinity instances in September must be reported by October 15th.

(iv) Operators of motorized commercial whale watching vessels must report vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 within twenty-four hours.

(v) ((~~Operators of nonmotorized whale watching vessels~~)) Kayak guides must report vicinity instances that happen October through June within one week.

(c) It is unlawful to fail to report a vicinity instance or to fraudulently report the details of a vicinity instance.

(d) Logs must be provided for inspection on request of department law enforcement.

(4) All motorized commercial whale watching license holders must log accurate, complete sighting information to the WhaleReport application for the whale report alert system (WRAS), or to a successor transboundary notification system designated by the department that is adopted by the international shipping community in the Salish Sea, immediately upon entering within one-half nautical mile of a southern resident killer whale.

AMENDATORY SECTION (Amending WSR 21-01-216, filed 12/23/20, effective 1/23/21)

WAC 220-460-150 Penalties. (1) Commercial ((~~operators~~)) whale watching license holders in violation of WAC 220-460-090 may be issued a notice of infraction punishable under chapter 7.84 RCW that carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(2) ((~~Operators~~)) Commercial whale watching license holders out of compliance with WAC 220-460-100, 220-460-110, 220-460-120, 220-460-130, or 220-460-140 may be issued a notice of infraction that carries a fine of up to five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(3) Nothing in this chapter prohibits the filing of criminal charges for violations of RCW 77.15.815 in lieu of issuance of a notice of infraction.

WSR 21-11-100
EXPEDITED RULES
DEPARTMENT OF COMMERCE
[Filed May 19, 2021, 9:34 a.m.]

Title of Rule and Other Identifying Information: Chapter 365-135 WAC, Bond cap allocation, amendments to WAC 365-135-035 (1), (2), 365-135-070 (1)(a), (4), (5), (6).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change will adjust six references within the existing WAC provisions from September 1 to July 1. This will allow for earlier reallocation of unutilized bond cap from initial set-aside categories to applicants in other categories reducing wait times for projects to proceed. This will assist with maximizing utilization of bond cap during the calendar year.

The change to WAC 365-135-035(1) amends the date (from September 1 to July 1) after which housing programs and projects are given priority for the first fifty percent of released/reallocated volume cap.

The change to WAC 365-135-035(2) amends the date (from September 1 to July 1) of the provision which indicates that applicants from all other categories will be considered for allocation of released/reallocated volume cap.

The change to WAC 365-135-070 (1)(a) amends the date (from September 1 to July 1) when an exempt facility applicant may be awarded more than thirty percent of the initial set-aside for exempt facility projects.

The change to WAC 365-135-070(4) amends the date (from September 1 to July 1) at which the application criteria for exempt facility applicants are softened.

The change to WAC 365-135-070(5) amends the date (from September 1 to July 1) when exempt facility projects may receive an allocation to convert taxable financing to tax-exempt financing.

The change to WAC 365-135-070(6) amends the date (from September 1 to July 1) when four tiers of limitations on the proportion of volume cap allocation to total project cost can be waived.

Reasons Supporting Proposal: These changes will provide conformance with the provisions of chapter 39.86 RCW which were amended in 2010 to alter release/reallocation dates for initial bond cap set-asides from September 1 to July 1. These changes will ensure that the framework and intent that existed in the rules prior to the amendments to the code in 2010 are restored.

Without the change to WAC 365-135-035(1) housing programs may receive less than fifty percent of released/reallocated volume cap. This is inconsistent with the WAC framework and intent that existed prior to RCW changes in 2010 and the amendment would bring consistency with the pre-2010 rules.

Without the change to WAC 365-135-035(2) applicants from various categories do not have explicit authorization under the rules for reallocation of initial set-asides in other underutilized categories. This is inconsistent with the WAC framework and intent that existed prior to RCW changes in 2010 and the amendment would bring consistency with the pre-2010 rules.

Without the change to WAC 365-135-070 (1)(a) amends the date (from September 1 to July 1) an exempt facility applicant is inhibited from immediate consideration for released cap. As a result, exempt facility projects are at a disadvantage in competing for released volume cap in comparison to other categories in a manner that did not occur prior to the 2010 amendments to chapter 39.86 RCW.

Without the change to WAC 365-135-070(4) the strict criteria for exempt facility applicants are maintained for a

period after the general release date in a manner inconsistent with the pre-2010 framework.

Without the change to WAC 365-135-070(5) the date when an exempt facility project may receive an allocation to convert taxable financing to tax exempt financing occurs two months after the general release date. As a result, these projects are at a disadvantage in competing for released volume cap in comparison to other categories in a manner that did not occur prior to the 2010 amendments to chapter 39.86 RCW.

Without the change to WAC 365-135-070(6) the date when four tiers of limitations on the proportion of volume cap allocation to total project cost are waived occurs two months after the general release date. As a result, these projects are at a disadvantage in competing for released volume cap in comparison to other categories in a manner that did not occur prior to the 2010 amendments to chapter 39.86 RCW.

Statutory Authority for Adoption: RCW 34.05.353 (1) (b) and (d).

Statute Being Implemented: Chapter 39.86 RCW.

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

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Allan Johnson, 1011 Plum Street S.E., Olympia, WA 98504, 360-725-5033.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This will affect timing of release/reallocation dates but will not change the overall amount of private activity volume cap. It may assist in maximizing use of volume cap within a specific calendar year.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed WAC amendments will bring the rules into conformance with the code revisions adopted in 2010 that changed the release dates for initial set-asides from September 1 of each year to July 1 of each year.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Amber Siefer, Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98504-2525, phone 360-522-0101, email amber.siefer@commerce.wa.gov, AND RECEIVED BY July 19, 2021.

May 19, 2021
Amber Siefer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-07-128, filed 3/23/10, effective 4/23/10)

WAC 365-135-035 Reallocations. (1) Housing programs and projects will be given priority for the first fifty percent of the annual tax exempt private activity bond cap available after ((~~September~~)) July 1st each year because of the need for affordable housing, the program's ability to serve lower-income households, its contribution to and support of economic development and long-term benefits that may be achieved.

(2) Bond cap will consider other categories of applications including industrial development bonds, exempt facilities, public utility districts, and student loans for allocation from the remaining bond cap available after ((~~September~~)) July 1st.

(a) The program will consider and then evaluate and balance the public benefits listed in statute and in rule in making allocation decisions. Allocations will be based upon the likelihood of a project achieving the highest overall public purposes and the degree to which a project:

(i) Provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security);

(ii) Creates or retains jobs that pay higher than the median wage for the county in which it is located, in sustainable industries, particularly for lower-income persons;

(iii) Retains or expands the local tax base;

(iv) Encourages and facilitates the provision of student loans for institutions of higher education;

(v) Reduces environmental pollution;

(vi) Facilitates investments in new manufacturing technologies enabling Washington industries to stay competitive;

(vii) Diverts solid waste from disposal and manufactures it into value-added products;

(viii) Encourages the environmentally sound handling of solid waste using best management's practices; or

(ix) Produces competitively priced energy for use in the state.

(b) The criteria in this section and other applicable criteria otherwise established in statute and rule shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.

(3) For the purposes of qualified energy conservation bonds, the federal code and U.S. Department of Treasury guidance contained in IRS Notice 2009-29 allow formula allocations to be reallocated to the state and passed on by the state to other issuers. An originally awarded locality may designate other issuing localities within the jurisdiction of the

originally awarded locality to use all or a portion of its original allocation by any procedure mutually acceptable to both parties, on condition that the originally awarded locality provides documentation of the designation to the department within thirty days of making the designation and ensures that all other department requests for documentation are met. The following procedures will apply to qualified energy conservation bond reallocations:

(a) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a *Notice of Intent* form with the department by January 1, 2010.

(b) An originally awarded locality that has chosen to decline its original allocation may affirmatively reallocate to the state by submitting an appropriately marked *Notice of Intent* form.

(i) The form must be signed by the official(s) of the jurisdiction authorized to execute the form pursuant to a resolution declining the allocation adopted by the jurisdiction's governing body; and

(ii) The form and the resolution declining the allocation must be delivered to the department by January 1, 2010.

(c) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use the allocation and has decided to reallocate to the state.

(d) An originally awarded locality intending to use its original allocation must provide the department with project information and supporting documents by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms, or equivalent, at the discretion of the bond cap manager, and a certified copy of an inducement resolution by the governing board. A locality may request an extension if filed by February 1, 2010.

(e) If an originally awarded locality has not provided the department with the documents required by subsections (1), (2) or (4) of this section or has not issued bonds or requested an extension by June 1, 2010, the department may issue a *Notice of Intent to Reallocate*, informing the locality of the intent to reallocate the original allocation to another locality.

(f) An originally awarded locality will have fifteen days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider the reallocation determination.

(g) The department will respond to a request to reconsider a reallocation determination within ten business days with a decision by the assistant director of the local government division or designee to grant an extended time in which the issuing jurisdiction must demonstrate progress toward a qualified energy conservation bond issuance, or a decision to go forward with reallocation of the authority. The length of the time extension shall be determined at the discretion of the assistant director.

(4) For the purposes of recovery zone economic development bond and recovery zone facility bond allocations, an originally awarded locality may designate other issuing localities within the jurisdiction of the originally awarded locality to use all or a portion of its original allocation by any procedure mutually acceptable to both parties, on condition that the originally awarded locality provides documentation of the designation to the department within thirty days of making the designation and ensures that all other department requests for documentation are met.

If an originally awarded locality is not able to or chooses not to use its original allocation or to offer it to another issuer within the jurisdiction of the originally awarded locality, the authority may be waived. Waived recovery zone economic development bond or recovery zone facility bond authority may be reallocated by the department to other issuing localities. In addition, if an originally awarded locality does not respond to the department's requests for information regarding its intent to use its original allocation or progress in moving toward issuance by the federal deadline, the department may deem the allocation to have been waived.

In such cases, federal code provisions and U.S. Department of Treasury guidance in IRS Notice 2009-50 allow original allocations to be waived then reallocated by the state to other issuing localities. The following procedures will apply to any reallocations of waived recovery zone economic development bond or recovery zone facility bond authority:

(a) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a Notice of Intent form with the department by January 1, 2010.

(b) An originally awarded locality that has chosen to decline its original allocation may affirmatively waive the allocation for reallocation by the state by submitting an appropriately marked *Notice of Intent* form.

(i) The form must be signed by the official(s) of the jurisdiction authorized to execute the form pursuant to a resolution declining the allocation adopted by the jurisdiction's governing body; and

(ii) The form and the resolution declining the allocation must be delivered to the department by January 1, 2010.

(c) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use its original allocation and has decided to waive the allocation for reallocation by the state.

(d) An originally awarded locality intending to use its original allocation must provide the department with project information and supporting documents by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms, or equivalent, at the discretion of the bond cap manager, and a certified copy of an inducement resolution by the governing board. A locality may request an extension if filed by February 1, 2010.

(e) If an originally awarded locality has not provided the department with the documents required by subsections (1), (2) or (4) of this section or has not issued bonds or requested an extension by June 1, 2010, the department may issue a *Notice of Intent to Reallocate*, informing the locality of the intent to deem the original allocation to have been waived and to reallocate it to another locality.

(f) An originally awarded locality will have fifteen days from receipt of a *Notice of Intent to Reallocate* to respond to

the department with the required documentation or to ask the department to reconsider its waiver and reallocation determination.

(g) The department will respond to the request to reconsider its waiver and reallocation determination within ten business days with a decision by the assistant director of the local government division to grant an extended time in which the issuing jurisdiction must demonstrate progress toward a recovery zone economic development bond or recovery zone facility bond issuance, or a decision to go forward with waiver and reallocation of the authority. The length of the time extension shall be determined at the discretion of the assistant director.

(h) All recovery zone bonds must be issued by the deadlines established in the code.

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

WAC 365-135-070 Criteria for exempt facility bonds. (1) In addition to the state statute, the following guidelines will be used as criteria for evaluating exempt facility requests:

(a) Until ((~~September~~)) July 1st of each year, any one exempt facility project may not receive more than thirty percent of the initial allocation amount available in the exempt facility category.

(b) The level of unemployment in a particular community within a county, to the extent that figures are available from the Washington state employment security department.

(c) The number of direct jobs and secondary or spin-off jobs expected to be generated by the project.

(d) The degree to which the project proposes to provide jobs for lower-income persons from the community.

(e) The number of jobs created in proportion to the amount of the bond cap allocation.

(f) The proportionate number of persons in relationship to the size of the community who will benefit from the project.

(g) The degree to which the project provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security).

(h) The degree to which the project retains or expands the local tax base.

(i) The degree to which the project reduces environmental pollution.

(j) The degree to which the project diverts solid waste from disposal and manufactures it into value-added products.

(k) The degree to which the project produces energy at a lower cost than alternative or existing energy sources.

(l) The environmental benefit of the project to the particular community, the county or the state.

(m) The availability of bond cap from the exempt facility category.

(n) Recognize and accommodate the unique timing, and issuance needs of large scale projects that may require allocations in more than one year.

(o) Projects that result in publicly owned facilities over privately owned facilities.

(2) Exempt facility applications will not be considered for allocation until:

(a) The department receives:

(i) A list of all permits required to complete the project and the date each permit application was submitted to and/or granted by the appropriate authority;

(ii) A copy of any environmental impact statements; and

(b) Significant progress is demonstrated in securing project financing.

(3) The criteria in this section and other applicable criteria otherwise established in rule and statute shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.

(4) After ((~~September~~)) July 1st of each year, the department may approve an allocation amount prior to the issuer completing all of the criteria listed above.

(5) Exempt facility projects may receive an allocation in order to convert taxable financing to tax-exempt financing, but only in January or ((~~September~~)) July of any year. The request for conversion will be compared against other requests for conversion and current exempt facility applications. Projects that use the Washington economic development finance authority to complete their financing will have priority over projects in obtaining future allocations to convert to tax-exempt financing. Conversion is only allowed within the federal guidelines of one year after the project comes online or two calendar years after the Washington economic development finance authority financing is approved, whichever comes first.

(6) Exempt facility projects up to $50,000,000 may receive an allocation for up to one hundred percent of the total project cost. Projects from $50,000,001 to $75,000,000 may receive an allocation for up to ninety percent of the total project cost. Projects from $75,000,001 to $100,000,000 may receive an allocation for up to eighty percent of the total project cost. Projects over $100,000,000 may receive an allocation for up to seventy percent of the total project cost. A project may obtain additional allocation above these percentages after ((~~September~~)) July 1st of the last year of eligibility only if the total demand for cap is lower than the amount available.

WSR 21-11-111
EXPEDITED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed May 19, 2021, 10:37 a.m.]

Title of Rule and Other Identifying Information: Chapter 415-02 WAC, General rules affecting multiple plans and systems; and chapter 415-108 WAC, Public employees' retirement system.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To eliminate subsection numbers in citations for definitions.

Reasons Supporting Proposal: Lists of definitions in RCW and WAC are alphabetized, so subsection numbers change when new terms are added. Eliminating references to

specific subsections will remove and avoid incorrect citations.

Statutory Authority for Adoption: RCW 41.50.050.

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

Name of Proponent: Department of retirement systems (DRS), governmental.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, phone 360-664-7291, email drs.rules@drs.wa.gov, AND RECEIVED BY July 19, 2021.

May 19, 2021
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-13-064, filed 6/15/20, effective 7/16/20)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010((~~(30)~~)) (TRS); RCW 41.35.010((~~(14)~~)) (SERS); RCW 41.40.010((~~(17)~~)) (PERS); and RCW 41.37.010((~~(14)~~)) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120((~~(15)~~)).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is ***not*** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010((~~(10)~~)) and 41.32.345 (TRS); RCW 41.35.010((~~(6)~~)) (SERS); RCW 41.37.010((~~(6)~~)) (PSERS); and RCW 41.40.010((~~(8)~~)) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030((~~(2)~~)) (LEOFF), 41.32.010((~~(11)~~)) (TRS), 41.34.020((~~(5)~~)) (Plan 3), 41.35.010((~~(4)~~)) (SERS), 41.37.010((~~(4)~~)) (PSERS) and 41.40.010((~~(4)~~)) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500((~~(3)~~)).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030((~~(12)~~)).

(18) **First employed by an eligible employer in an eligible position** means, for purposes of plan default, first

employment with an employer, in an eligible position, with which a member has fully exhausted their plan choice rights.

(19) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

(20) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(21) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(22) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(23) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(24) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(25) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(26) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(27) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(28) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work in a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(a) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or

(b) Does not evaluate staff.

(29) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820 (1) (PERS Plan 3), or 43.43.250 (WSPRS).

(30) **Participant** means an eligible employee who participates in a deferred compensation plan.

(31) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

(32) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(33) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

(34) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

(35) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(36) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(37) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

(38) **Plan choice rights** refers to a member's right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3 or be defaulted into a plan after the full ninety-day period has expired.

(a) A member will be reported in Plan 2 until plan choice rights have been exercised.

(b) A member must make a choice within ninety calendar days (computed as described in RCW 1.12.040) from the first day of employment in an eligible position.

(c) A member will be defaulted into a plan if they continue employment in an eligible position past the ninety-day plan choice period without making a choice.

(d) A member may exercise plan choice rights only once per system.

(39) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

(40) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

(41) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

(42) **Public record** is defined in RCW ((~~42.17.020(41)~~)) 42.56.010.

(43) **Restoration** is the process of restoring a member's service credit for prior periods.

(44) **Retirement system employer - See "employer."**

(45) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

(46) **Separation date** is the date a member ends employment in a position eligible for retirement.

(47) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

(48) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

(49) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

(50) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

(51) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

(52) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

(53) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

(54) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

AMENDATORY SECTION (Amending WSR 04-04-038, filed 1/29/04, effective 3/1/04)

WAC 415-02-200 Can I transfer former LEOFF Plan 1 service? If you are a member of PERS, TRS, SERS, or WSPRS, and you have previously established service credit in LEOFF Plan 1, you may ***irrevocably*** choose to transfer your LEOFF Plan 1 service to your current retirement system and plan subject to the following conditions:

(1) The choice to transfer service must be filed in writing with the department no later than one year from the date you become employed by a PERS, TRS, SERS, or WSPRS employer in an eligible position.

(2) If you transfer your service credit under this section:

(a) You will forfeit (lose) all rights to benefits as a LEOFF Plan 1 member and will be permanently excluded from membership.

(b) Your transferred service will ***not apply*** to the eligibility requirements for military service credit as defined in RCW 41.40.170(3) for PERS Plan 1 or in RCW 43.43.260(3) for WSPRS Plan 1.

(3) When you transfer your service credit under this section to your current retirement system and plan, DRS will transfer:

(a) All of your accumulated LEOFF Plan 1 contributions;

(b) An amount sufficient to ensure that the employer contribution rate in your current system and plan will not increase because of the transfer; and

(c) All applicable months of LEOFF Plan 1 service credit, as defined in RCW 41.26.030 (((~~(14)(a)~~))).

(4) If you previously withdrew contributions from LEOFF Plan 1, you:

(a) May restore the contributions, together with interest as determined by the director, and recover the service represented by the contributions for the sole purpose of transferring service under this section;

(b) Must restore the contributions before the transfer can occur; and

(c) Must complete the restoration within the time limitations specified in subsection (1) of this section.

(5) If you do not meet the time limitations of subsection (1) of this section, you may restore any withdrawn contributions and transfer service under this section by paying the amount required under subsection (3)(b) of this section less any employee contributions transferred.

(6) **Terms used:**

LEOFF - Law enforcement officers' and firefighters' retirement system.

PERS - Public employees' retirement system.

SERS - School employees' retirement system.

TRS - Teachers' retirement system.

WSPRS - Washington state patrol retirement system.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-108-010 Definitions in the public employees' retirement system. All definitions in RCW 41.40.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.40 RCW are defined in this chapter.

(1) **Annual leave** means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual leave does not usually include leave for illness, personal business if in addition to and different from vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave, covering paid leave for vacation, illness, and any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(2) **Level of union organization** means a union or a lodge or division of a union.

(3) **Normally** as used in the definition of eligible position under RCW 41.40.010 means a position is eligible if it is expected to require at least five months of seventy or more hours of compensated service each month during each of two consecutive years. Once a position is determined to be eligible, it will continue to be eligible if it requires at least five months of seventy or more hours of compensated service during at least one year in any two-year period.

(4) **Project position** means a position, established by an employer, which has a specific goal and end date.

(5) **Public corporation** means a public corporation created under RCW 35.21.730. A public corporation may be admitted as an "employer" under the definition in RCW 41.40.010(((~~(4)~~))).

(6) **Report** means an employer's reporting of an employee's hours of service, compensation and contributions to the department on the monthly transmittal report.

(7) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.40.010(((~~(8)~~))).

(8) **Retirement plan** as used in RCW 41.40.023 and in this chapter, means any plan operated wholly or in part by the state or a political subdivision. This includes, but is not limited to:

(a) The retirement systems listed under RCW 41.50.030;

(b) The retirement systems of the cities of Seattle, Spokane and Tacoma; or

(c) Any higher education plan authorized under RCW 28B.10.400.

(9) **System acronyms** used in this chapter are defined as follows:

(a) "PERS" means the public employees' retirement system.

(b) "TRS" means the teachers' retirement system.

(c) "SERS" means the school employees' retirement system.

(10) **Union** means a labor guild, labor association, and/or labor organization.

(11) **Union employer** means a union or a union lodge or other division of a union which has verified that it meets the definition of a Plan 1 employer in RCW 41.40.010.

(12) **Year** means any twelve consecutive month period established and applied consistently by an employer to evaluate the eligibility of a specific position. The term may include, but is not limited to, a school year, calendar year or fiscal year.

Example: An employer has used the twelve consecutive month period from July 1st to June 30th to evaluate the eligibility of positions. When the employer hires a new employee to fill an existing position, the employer must continue to use the July 1st through June 30th period to define a year for the position.

Example: If the same employer in the above example hires a person to work in a project position beginning in November, the employer will use the twelve-month period beginning in November to evaluate the eligibility of the new position. The employer must consistently apply this twelve-month period to evaluate the eligibility of this position.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-108-436 PERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.40.670 and 41.40.825 for members of PERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a PERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-108-326. If you choose an option with a survivor benefit, your monthly benefit will be reduced to offset the cost of the survivor option.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete and sign the application. If you are married, your spouse's consent may be required as described in WAC 415-108-326.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, there will be no difference in the dollar amount of your benefit.

(7) **Once my application is approved, when will my benefit begin?**

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from PERS employment.

(i) If you are continuing to perform the duties of your position or another PERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) **What information must be provided to the department if I am receiving disability benefits?**

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) **How long will my disability benefits last?** You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.40.052(3) or contact the department.

(13) **Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997?** No. For more information, see RCW 41.40.-054.

(14) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) **Is it possible to lose my disability benefits after I begin receiving them?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.40.010 (((~~(4)(b)~~))), at a comparable compensation.

(b) If you return to employment and reenter PERS membership, your benefits will cease.

(16) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of PERS Plan 2, see RCW 41.40.625.

(ii) If you are a member of PERS Plan 3, see RCW 41.40.815.

AMENDATORY SECTION (Amending WSR 02-18-045, filed 8/28/02, effective 9/28/02)

WAC 415-108-445 What compensation can be reported? (1) **Compensation earnable:**

(a) Compensation earnable must meet the definition in RCW 41.40.010(((~~(8)~~))) and:

(i) Be earned as a salary or wage for personal services provided during a payroll period and be paid by an employer to an employee; or

(ii) Qualify as compensation earnable under WAC 415-108-464 through 415-108-470.

(b) The department determines whether payments to an employee are compensation earnable based on the nature, not the name, of the payment. The department considers the reason for the payment and whether the reason brings the payment within the statutory definition of compensation earnable.

Example: "Longevity pay" conditioned on retirement is not for services provided and is therefore not compensation earnable.

(c) "Compensation earnable" is defined in very similar terms for all three PERS plans. Any differences among plans are specifically noted in WAC 415-108-443 through 415-108-488.

(2) **Reportable compensation:**

(a) Reportable compensation is the compensation paid by an employer to an employee that the employer must report to the department.

(b) An employer must report all of an employee's compensation earnable, as defined by RCW 41.40.010((~~(8)~~)) and WAC 415-108-445((~~(1)~~)), to the department.

(c) An employer must report compensation for the month in which it was earned. Compensation is earned when the service is provided, rather than when payment is made.

Example: A member is paid in July for work performed during June. The employer must report the compensation to the department as "June earnings."

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

WAC 415-108-456 Leave payments earned over time. (1) **Sick and annual leave usage.**

(a) Leave accrues at a prescribed rate, usually a certain number of hours per month.

(b) You earn a leave day by providing service during the month the leave accrued.

(c) Sick leave and annual leave are accumulated over time and paid to you during a period of excused absence.

(d) When you use your accrued leave by taking a scheduled work day off with pay, the payment is deferred compensation for services previously provided.

(e) The payment is a salary or wage earned for services provided and is reportable.

(2) **Annual leave cash outs.** Annual leave cash outs, like payments for leave usage, are deferred compensation earned for services previously provided. Whether, and to what extent an annual leave cash out qualifies as reportable compensation depends upon the PERS plan to which you belong and the type of employer.

(a) **Plans 2 and 3:** Annual leave cash outs are not reportable compensation. Although the payments are for services provided, they are excluded from the definition of compensation earnable by statute. See RCW 41.40.010 ((~~(8)(b)~~)).

(b) **Plan 1, state government employees:** A cash out of up to thirty days of annual leave for state government employees is reportable compensation. See RCW 43.01.040. A cash out in excess of thirty days of annual leave:

(i) Qualifies as reportable compensation if the leave is authorized by a letter of necessity under RCW 43.01.040. Annual leave qualifies as authorized under a letter of necessity only if the leave was earned after the letter of necessity was issued;

(ii) Does not qualify as reportable compensation if the leave is earned between the date that you accrued thirty days of annual leave and your anniversary date under RCW 43.01.044.

(c) **Plan 1 employees not covered by subsection (2)(b) of this section:** All annual leave cash outs received by PERS Plan 1 members who are not state employees qualify as reportable compensation.

(3) **Sick leave cash outs.** Sick leave cash outs are deferred compensation for services previously provided.

(a) Sick leave cash outs are excluded from the definition of compensation earnable for PERS Plan 2 or 3 members by statute. See RCW 41.40.010 ((~~(8)(b)~~)).

(b) Sick leave cash outs are reportable compensation for PERS Plan 1 members other than state, school district, and educational service district employees.

(c) Sick leave cash outs are excluded from reportable compensation for:

(i) State employees by RCW 41.04.340;

(ii) School district employees by RCW 28A.400.210; and

(iii) Educational service district employees by RCW 28A.310.490.

See RCW 41.40.010 ((~~(8)(a)~~)).

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

WAC 415-108-458 Severance pay earned over time. (1) **PERS Plan 1:** Severance pay earned over time is reportable compensation. Conversely, severance pay not earned over time is not reportable compensation (see WAC 415-108-488). The difference is that severance pay earned over time is deferred compensation for services previously provided.

Severance pay is earned over time if the employment contract(s) or compensation policies in effect at the beginning of a given period of employment specify that a certain amount of severance pay will be earned during that period in consideration for services provided.

Example: Mr. Jones is a PERS Plan 1 member employed as a city manager. Since the beginning of his term of employment with the city, his contract has specified that he will earn one week of severance pay for every year of his employment. The earned severance pay will be paid at the time of his separation. His severance pay is reportable compensation. When Mr. Jones retires, the two weeks severance pay that he earned during his two highest paid years (i.e., one week per year for two years) will be included in his PERS Plan 1 retirement calculation.

To the extent that severance pay qualifies as reportable compensation and is earned within your average final compensation period, the severance pay is excess compensation. See RCW 41.50.150.

(2) **PERS Plans 2 and 3:** All forms of severance pay are excluded from earnable compensation. See RCW 41.40.010 ((~~(8)(b)~~)).

AMENDATORY SECTION (Amending WSR 01-08-057, filed 4/2/01, effective 5/3/01)

WAC 415-108-467 Reinstatement or payment instead of reinstatement. (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.40.010((~~(8)~~)) specif-

ically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

AMENDATORY SECTION (Amending WSR 98-09-059, filed 4/17/98, effective 5/18/98)

WAC 415-108-469 Standby pay. Some employers pay employees for being on "standby." A member is on standby when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work if the need arises, although the need may not arise. Because the member is not actually working, the member is not rendering service. However, RCW 41.40.010(((~~(8)~~))) specifically identifies standby pay that meets the above requirements as reportable compensation. Although included in the definition of compensation earnable, time spent on standby is excluded from the definition of "service," see RCW 41.40.010(((~~(9)~~))).

AMENDATORY SECTION (Amending WSR 99-14-008, filed 6/24/99, effective 7/25/99)

WAC 415-108-510 Treatment of cash payments made in lieu of unused leave—First-in-first-out accounting method for determining when leave earned—Forms of leave deemed excess compensation—Conversions. (1) Cash compensation in lieu of unused annual or sick leave may be considered compensation earnable for Plan 1 members subject to the provisions of RCW 41.40.010 (((~~(8)(a)~~))) and WAC 415-108-456. Employers may not limit the inclusion of cash compensation paid in lieu of unused annual or sick leave as compensation earnable in conflict with RCW 41.40.010 (((~~(8)(a)~~))). Provisions of collective bargaining agreements, employment and administrative policies or other rules applied by an employer that conflict with RCW 41.40.010 (((~~(8)(a)~~))) and rules adopted thereunder are without legal effect.

(2) When an employer provides cash compensation in lieu of unused annual or sick leave, the department applies a first-in-first-out accounting method to determine when the compensated leave was earned, and when or whether the leave was used or cashed out, with the following exceptions:

(a) As otherwise provided in *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52 (1993); and

(b) The employer has in place a regulation, charter provision, ordinance, collective bargaining agreement, or other comparable written policy statement which clearly delineates when the cashed out leave was accrued, or a different method of accounting for the accrual and use of leave, and, if applicable, compensation for unused leave and the same such method is consistently applied in each instance and for all purposes.

Any employer's policy which is not consistent for all purposes which is contained in a regularly negotiated labor agreement in effect on the effective date of this section will be honored until the expiration date of the agreement not including any extensions at which time it will be brought into compliance with this section. Any employer's policy which is not consistent for all purposes which is established by the employer shall be brought into compliance within sixty days of the effective date of this section. In the event an employer fails to come into full compliance with this section by the dates established herein, the department will treat cashed out leave on the same basis as the employer has established for using leave.

(3) A cash out of leave which is not annual leave as defined under WAC 415-108-010, shall be treated by the department as "any other form of leave" under RCW 41.50.150(2). The department shall bill the employer for any such leave cash out as excess compensation under RCW 41.50.150.

(4) For purposes of determining average final compensation and excess compensation, hours of leave earned by a member shall be considered for all purposes in the form in which it was earned. The department shall disregard any conversion of leave by an employer from one form to another and bill the employer for the amount converted as excess compensation pursuant to RCW 41.50.150.

AMENDATORY SECTION (Amending WSR 03-08-090, filed 4/2/03, effective 5/1/03)

WAC 415-108-550 Elected officials—Eligibility and application for retirement service membership. (1) **Definition:** For the purposes of this section and WAC 415-108-570, and pursuant to RCW 41.40.010 (((~~(25)(b)~~))), 41.40.010 (((~~(9)(a)~~))), 41.40.023 and 41.40.035, "elected" officials means individuals elected to any state, local or political subdivision office or individuals appointed to any vacant elective office.

(2) **Voluntary application for membership:** Under RCW 41.40.023 (3)(a), elected officials are exempt from mandatory retirement system membership. You have the option to apply for membership during your current term of elected office. To apply for membership, submit a written application directly to the department. When the department approves your application, you will be entitled to establish membership effective the first day of your current term of elected service. Once membership is established, you will be required to pay the employee contributions from the first day of your current term of elected service with interest as determined by the department.

(3) If you are not currently a retiree and when the department approves your application, you may establish membership retroactive to the first day of any previous elected term or terms of office. Your plan membership that you established under subsection (2) of this section remains the same. To exercise this option, you must apply to the department pursuant to subsection (2) of this section. When the department approves the application, you must:

(a) Pay the required employee contributions for such previous term or terms of elected service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of elected service with interest as determined by the department. The employer may, in its discretion, pay the required employer contributions plus interest in lieu of your paying this amount.

(4)(a) If you are a retiree and you become an elected official, you may establish membership prospectively from the first day of the month following the date the department accepts your application.

(b) If you chose not to establish membership, the reemployment provisions of RCW 41.40.037 and WAC 415-108-710 will apply to you.

(5) **Multiple positions:** If you are employed in an eligible position at the time of election to office and will hold multiple positions concurrently, you may:

(a) Apply to the department to participate in membership pursuant to your elected position as provided in subsection (2) of this section; or

(b) Choose not to participate pursuant to your elected position while continuing membership through the nonelected position.

(6) **Membership length:** Except as provided under RCW 41.40.023 (3)(b), once you become a member of the retirement system you shall remain a member until you separate from all eligible public employment pursuant to RCW 41.40.150. It is not a separation if:

(a) Your term of office ends and you begin another term of office in the same or a different position for the same employer without a break in service; or

(b) You resign from your elected position and you are later reappointed to the same position during the same term.

(7) This section codifies the department's long-standing administrative practice in relation to elected officials. The department will apply this section to service by elected officials which occurred prior to the effective date of this section.

AMENDATORY SECTION (Amending WSR 03-08-090, filed 4/2/03, effective 5/1/03)

WAC 415-108-560 Appointed officials—Eligibility and application for retirement service membership. (1) For the purposes of this section and WAC 415-108-570, an "appointed" official is a person who meets the criteria in RCW 41.40.010 (((~~(25)(b)~~))) and is not excluded by the criteria in RCW 41.40.035.

(2) **Voluntary application for membership:** Under RCW 41.40.023 (3)(a), appointed officials are exempt from mandatory retirement system membership. You have the option to apply for membership during your current term of appointed service. To apply for membership, submit a written application directly to the department. When the department approves your application you will be entitled to establish membership effective the first day of your current term of appointed service. Once membership is established, you will be required to pay the employee contributions for your current term of appointed service with interest as determined by the department.

(3) If you are not currently a retiree and when the department approves your application, you may establish membership retroactive to the first day of any previous appointed term or terms of office. Your plan membership that you established under subsection (2) of this section remains the same. To exercise this option, you must apply to the department pursuant to subsection (3) of this section. When the department approves the application you must:

(a) Pay the required employee contributions for such previous term or terms of appointed service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of appointed service with interest as determined by the department. The employer may, in its discretion, pay the required employer contributions plus interest in lieu of your paying this amount.

(c) "Current term of appointed service" includes an appointed official's entire current term of service. If you have not been appointed to a position with a set term of office, "current term of appointed service" includes all uninterrupted service in your current appointed position.

(4)(a) If you are a retiree and you become an appointed official, you may establish membership prospectively from the first day of the month following the date the department accepts your application.

(b) If you choose not to establish membership, the reemployment provisions of RCW 41.40.037 and WAC 415-108-710 will apply to you.

(5) **Multiple positions:** If you are employed in an eligible position at the time of appointment to office and will hold the two positions concurrently you may:

(a) Apply to the department to participate in membership pursuant to your appointed position as provided in subsection (2) of this section; or

(b) Choose not to participate pursuant to your appointed position while continuing membership through the nonappointive position.

(6) **Membership length:** Once you become a member of the retirement system you shall remain a member until you separate from all eligible public employment pursuant to RCW 41.40.150. It is not a separation if:

(a) Your term of office ends, and you begin another term of office in the same or a different position for the same employer without a break in service; or

(b) You resign from your appointed position and you are later reappointed to the position during the same term.

(7) This section codifies the department's long-standing administrative practice in relation to appointed officials. The department will apply this section to service by appointed officials which occurred prior to the effective date of this section.

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

WAC 415-108-690 How is my membership eligibility evaluated? (1) **Your eligibility to participate as a member of PERS is based on your position.**

In evaluating whether your position is eligible for membership, your employer will determine only whether the posi-

tion meets the criteria of an eligible position under RCW 41.40.010((~~(25)~~)) and WAC 415-108-680(1). Your employer will not consider your membership status or individual circumstances unless you:

(a) Leave employment in an eligible position to serve in a project position (See WAC 415-108-680(2)); or

(b) Work in both a PERS and TRS position during the same school year (See WAC 415-108-728).

(2) **Your employer will evaluate your position's eligibility for a particular year at the beginning of the year.** This is normally a calendar year unless your employer has determined and supports a different twelve-month period for its year.

(3) **Your employer or the department may reclassify your position's eligibility based upon your actual work history.** If your employer declares your position to be ineligible at the beginning of a year and by the end of the year, you have actually worked five or more months of seventy or more hours, your employer will, at that time, review your position's eligibility. If at the end of the first year:

(a) Your employer believes your position meets the requirements for an eligible position and declares the position as eligible, you will enter membership and your employer will report you to the department effective from the date your employer declares the position as eligible; or

(b) Your employer believes that the position will not meet the criteria for an eligible position during the next year, your employer may continue to define your position as ineligible. However, if during the next year the position actually requires you to again work seventy or more hours each month for at least five months, the department will declare your position as eligible. You will enter membership in the retirement system.

(i) Except as provided in (b)(ii) of this subsection, your employer will report you to the department effective from the first month of the first year in which your position required you to work for seventy or more hours.

(ii) If:

(A) Your employer has monitored the work history of your position for PERS eligibility;

(B) Has notified you in writing when you entered the position that the position was not considered eligible; and

(C) The months of employment in a twelve-month period required by the position are determined by the occurrence or nonoccurrence of natural disasters such as forest fires;

You will enter membership prospectively.

(4) **The department will not reclassify your position's eligibility until history of the position shows that it meets the criteria for an eligible or ineligible position.**

(a) If your employer has declared your position ineligible, the department will not reclassify your position as eligible until history of the position shows a period of two consecutive years of at least five months of seventy or more hours of compensated employment each month.

(b) If your employer has declared your position ineligible, the position must continue to fail to meet the requirements of an eligible position or reclassification of your position will occur as stated in subsection (3)(b) of this section.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.

(b) "Employer" - RCW 41.40.010.

(c) "Ineligible position" - RCW 41.40.010.

(d) "Membership" - RCW 41.40.023.

(e) "Project position" - WAC 415-108-010.

(f) "Report" - WAC 415-108-010.

(g) "Year" - WAC 415-108-010.

AMENDATORY SECTION (Amending WSR 97-19-035, filed 9/9/97, effective 9/9/97)

WAC 415-108-730 Membership for city managers. The purpose of the WAC is to implement the provisions of RCW ((~~41.40.120(17)~~)) 41.40.023(17) relating to city managers.

Effective immediately and until December 31, 1986 any current member described in RCW ((~~41.40.120(17)~~)) 41.40.023(17) may, at his/her option, elect to withdraw from membership in the retirement system provided by chapter 41.40 RCW. Such election is to be made in writing on a form provided for that purpose by the department. Persons making this election will be refunded the contributions and related interest which were credited while in their current position. The effect of such a withdrawal will be to terminate and cancel the service credit acquired while in that position. Such action is final and no service credit may ever be obtained in the future for the period ((~~cancelled~~)) canceled.

Effective immediately any person described in RCW ((~~41.40.120(17)~~)) 41.40.023(17) who is employed in one of the positions described shall not become a member of the system provided by chapter 41.40 RCW unless within thirty days of employment in such position he/she shall submit in writing on a form, provided by the department, a waiver of his/her right to be excluded and requesting his/her inclusion in the system. Such a person may not then subsequently withdraw from the system except as provided by RCW 41.40.260 or 41.40.730 as appropriate.

AMENDATORY SECTION (Amending WSR 06-04-059, filed 1/27/06, effective 2/27/06)

WAC 415-108-800 When do I enter retirement status? As a member of PERS, you enter retirement status when you:

(1) Have separated from service as defined in RCW 41.40.010((~~(42)~~));

(2) Have no written or oral agreement to return to employment; and

(3) Have applied for retirement, the accrual date has been determined under RCW 41.40.193, 41.40.680, or 41.40.801, and your benefit begins to accrue.

Example: Sally is eligible for retirement on July 1st. She submits an application on June 1st with a July 1st retirement date. Her last day of employment is June 30th and she does not have an agreement to return to work.

Sally's retirement date (accrual date) is July 1st and the benefit begins to accrue. The first retirement payment will be paid at the end of July. Sally entered "retiree status" effective July 1st.

AMENDATORY SECTION (Amending WSR 02-12-085, filed 6/4/02, effective 6/13/02)

WAC 415-108-980 Will I receive a transfer payment when I transfer to Plan 3? (1) **PERS Plan 3 will be implemented on March 1, 2002.** If you transfer from PERS Plan 2 to PERS Plan 3 during the Phase 1 transfer period and establish service credit in June 2002, or transfer during the Phase 2 transfer period and establish service credit in either June 2002 or February 2003, you will receive a transfer payment to be added to your member account on or after June 1, 2003, once the department receives the transfer information from your employer. The transfer period and payment amount you will receive is based upon your employer type and your account balance as of March 1, 2002.

(a) You will receive a payment of one hundred and ten percent of your **transfer basis** if you are employed in an eligible position by a Phase 1 employer and you transfer to Plan 3 during the Phase 1 transfer period. State agencies and institutes of higher education are Phase 1 employers.

(b) You will receive a payment of one hundred and eleven percent of your **transfer basis** if you are employed in an eligible position by a Phase 2 employer and you transfer to Plan 3 during the Phase 2 transfer period. All other employers are Phase 2 employers.

(2) Your **transfer basis** is your total accumulated contributions (and interest) on March 1, 2002, less fifty percent of any contributions you made under RCW 41.50.165(2).

(3) If you request to transfer but die before payment is made, the transfer payment will be paid immediately to your defined contribution account. These moneys will be distributed when payment is made from your account to your estate, or the person or persons, trust or organization you nominated by the most recent written beneficiary designation filed with the department.

Examples:

Phase 1 Employer (110%) (state agencies and institutes of higher education)

• Al works for a Phase 1 employer and makes $2,000 a month.

• On March 1, 2002, Al's defined benefit (DB) account balance is $10,000.

• On June 1, 2002, Al transfers to PERS Plan 3 and chooses contribution rate option A (5%).

• On June 1, 2002, the department transfers approximately $10,185 to Al's new defined contribution (DC) account. The transfer amount is the sum of:

♦ Al's $10,000 account balance on March 1, 2002;

♦ Approximately $50 in contributions between March 1st and June 1st; and

♦ Approximately $135 in interest in Plan 2 at 5.5% annually, compounded quarterly.

• Al continues working for his Phase 1 employer through June 2003, including the month of June 2002.

• In June 2003, after he receives his transfer payment, Al will have approximately **$22,385** in his DC account. Here is how:

♦ In June 2002, when Al transferred to Plan 3, he started with approximately $10,185 in his DC account.

♦ He then made twelve monthly contributions of $100 (5% of a $2,000 salary, June 2002 through May 2003) for a total of $1,200.

♦ In June 2003, he receives a transfer payment of $11,000 (110% of $10,000, his account balance on March 1, 2002).

♦ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

Phase 2 Employer (111%) (local government)

• Peggy works for a Phase 2 employer and makes $2,000 a month.

• On March 1, 2002, Peggy's defined benefit (DB) account balance is $10,000.

• On November 1, 2002, Peggy transfers to PERS Plan 3 and chooses contribution rate option A (5%).

• On November 1, 2002, the department transfers approximately $10,560 to Peggy's new defined contribution (DC) account. The transfer amount is the sum of:

♦ Peggy's $10,000 account balance on March 1, 2002;

♦ Approximately $140 in contributions between March 1st and November 1st;

♦ Approximately $420 in interest in Plan 2 at 5.50% annually, compounded quarterly.

• Peggy continues working for her Phase 2 employer through June 2003, including the month of February 2003*.

* A Phase 2 employee can establish service credit in either June 2002 or February 2003.

• In June 2003, after she receives her transfer payment, Peggy will have approximately **$22,360** in her DC account. Here is how:

♦ In November 2002, when Peggy transferred to Plan 3, she started with approximately $10,560 in her DC account.

♦ She then made monthly contributions of $100 (5% of a $2,000 salary) for a total of $700.

♦ In June 2003, she receives a transfer payment of $11,100 (111% of $10,000, her account balance on March 1, 2002).

♦ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

(4) **Terms defined:**

Phase 1 employer: WAC 415-108-425.
Phase 2 employer: WAC 415-108-425.
Phase 1 transfer period: WAC 415-108-425.
Phase 2 transfer period: WAC 415-108-425.
Service: RCW 41.40.010 ((~~(9)(b)~~)).

Transfer basis: RCW 41.40.795 (1)(b).

Transfer period: RCW 41.40.795 (1)(a).

WSR 21-11-115
EXPEDITED RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed May 19, 2021, 11:41 a.m.]

Title of Rule and Other Identifying Information: WAC 110-15-4500 What are the types of child care subsidies?, 110-15-4505 Definitions, 110-15-4510 Child care for child protective services (CPS) and child welfare services (CWS), 110-15-4515 When are DSHS child care subsidy rates in this chapter effective?, 110-15-4520 What are the maximum child care subsidy rates CA pays for child care in a licensed or certified child care center?, 110-15-4525 What are the maximum child care subsidy rates CA pays for child care in a licensed or certified family home child care?, 110-15-4530 When can CA pay more than the maximum child care subsidy rate?, 110-15-4535 What is nonstandard hour child care?, 110-15-4545 How does DSHS determine that a child qualifies for a special needs rate?, 110-15-4550 What is the CA child care subsidy rate for children with special needs in a licensed or certified child care center?, 110-15-4555 What is the CA child care subsidy rate for children with special needs in a licensed or certified family home child care?, 110-15-4560 What is the CA in-home/relative child care rate for children with special needs?, WAC 110-15-4565 What is the maximum child care subsidy rate CA pays for in-home/relative child care?, 110-15-4575 What is the responsibility of DCYF regarding child care subsidies for in-home/relative child care?, and 110-15-4580 When can DSHS pay toward the cost of in-home/relative child care provided outside the child's home?

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Remove redundancies from chapter 110-15 WAC by repealing WAC 110-15-4515, 110-15-4535, and 110-15-4545. Replace references to department of social and health services (DSHS) children's administration and department of children, youth, and families (DCYF) references through the rest of the proposals.

Reasons Supporting Proposal: Effective July 1, 2018, DCYF assumed the programs and functions of the former DSHS children's administration and the department of early learning. Certain sections, including the proposals, were decodified from Title 388 WAC and recodified to Title 110 WAC. The proposed amendments make technical corrections necessary following the recodification and the proposed repealers remove redundancies in chapter 110-15 WAC.

Statutory Authority for Adoption: RCW 43.216.065.

Statute Being Implemented: RCW 74.13.031 (9) and (14).

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Toni Sebastian, 206-361-4686; Implementation and Enforcement: DCYF, statewide.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

This notice meets the following criteria to use the expedited repeal process for these rules:

Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making is appropriate for these rule changes because the proposed amendments are limited to internal government operations that are not subject to violation by a person and the proposed repealers will remove redundancies in chapter 110-15 WAC.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, DCYF, P.O. Box 40975, phone 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, AND RECEIVED BY August 2, 2021.

May 19, 2021
Brenda Villarreal
Rules Coordinator

PART IV. CHILD PROTECTIVE AND CHILD WELFARE SERVICES CHILD CARE SUBSIDIES

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4500 What ((~~are the~~)) types of child care subsidies are available to child welfare program participants? ((~~This chapter relates to the following subsidies in children's administration (CA)~~)) DCYF may purchase:

(1) Child protective services child care;

(2) Child welfare services child care; and

(3) Employed foster parent child care.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4505 Child and parent—Definitions. The following definitions apply ((~~throughout this chapter~~)) to WAC 110-15-4500 through 110-15-4580.

"Child" means a person twelve years of age or younger or a person under nineteen years of age who is physically,

mentally, or emotionally incapable of self-care as verified by a licensed medical practitioner or masters level or above mental health professional.

((**~~"In-home/relative child care provider"~~** ~~means a provider who meets the requirement in WAC 170-290-0130 through 170-290-0167.~~))

"Parent" means a biological or adoptive parent of a child or an individual who ((~~have~~)) has an established parent-child relationship under RCW 26.26.101, unless the legal rights of that person have been terminated or paternity has been disestablished.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4510 Child care for child protective services (CPS) and child welfare services (CWS). ((~~The department~~)) DCYF may purchase ((~~CPS/CWS~~)) child care within available funds for children of families in need of support as part of a ((~~CPS/CWS~~)) CPS or CWS case plan. This service is short-term and time-limited. Social workers must determine if other resources are available to meet this need before authorizing payment by the department.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4520 What are the maximum child care subsidy rates ((~~CA~~)) DCYF pays for child care in a licensed or certified child care center? ((~~CA~~)) Maximum child care subsidy rates for licensed child care centers can be found in WAC ((~~170-290-0200~~)) 110-15-0200.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4525 What are the maximum child care subsidy rates ((~~CA~~)) DCYF pays for child care in a licensed or certified family home child care? ((~~CA~~)) Maximum child care subsidy rates for licensed or certified family home child care can be found in WAC ((~~170-290-0205~~)) 110-15-0205.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4530 When can ((~~CA~~)) DCYF pay more than the maximum ((~~CA~~)) child care subsidy rate? ((~~CA~~)) DCYF pays additional subsidies to a licensed or certified family child care home or center when:

(1) Care is for nonstandard hours ((~~under WAC 388-165-195 and 388-165-200~~)) as defined in WAC 110-15-0249;

(2) A child has a documented special need((~~s~~)) under WAC ((~~388-165-210, 388-165-215, or 388-165-220~~)) 110-15-0220;

(3) Care is not available at the ((~~CA~~)) DCYF rate and the provider's usual rate is authorized;

(4) The provider is participating in the state's early achievers program and receives tiered reimbursement and state funds are available; or

(5) A child registration fee is applicable under WAC ((~~170-290-0245~~)) 110-15-0245.

To the extent that funds are available, ((~~CA~~)) DCYF may pay additional subsidies to licensed or certified family home child care for field trip and quality enhancement fees under WAC ((~~170-290-0245~~)) 110-15-0247.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4540 How does ((~~CA~~)) DCYF pay for nonstandard hour child care? ((~~CA~~)) DCYF authorizes the nonstandard hour bonus to licensed or certified child care providers as specified in WAC ((~~170-290-0249~~)) 110-15-0249.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4550 What is the ((~~CA~~)) DCYF child care subsidy rate for children with special needs in a licensed or certified child care center? For children with documented special needs, ((~~CA pays child care subsidies to licensed or certified child care centers as described in WAC 388-165-180. In addition, CA~~)) DCYF pays the base rate authorized in WAC 110-15-0200 and the lesser of:

(1) The actual cost of providing the special needs care; or

(2) The applicable rate listed in WAC ((~~170-290-0225~~)) 110-15-0225 (1)(a) or (b).

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4555 What is the ((~~CA~~)) DCYF child care subsidy rate for children with special needs in a licensed or certified family home child care? For children with documented special needs, ((~~CA~~)) DCYF pays ((~~child care subsidies to licensed or certified family child care homes as described in WAC 388-165-185. In addition, CA pays~~)) the base rate authorized in WAC 110-15-0205 and the lesser of:

(1) The actual cost of providing special needs care; or

(2) The applicable rate listed in WAC ((~~170-290-0230~~)) 110-15-0230 (1)(a) or (b).

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4560 What is the ((~~CA~~)) DCYF in-home/relative child care rate for children with special needs? For children with documented special needs, ((~~CA may authorize payment to in-home/relative child care providers in accordance with~~)) DCYF pays the base rate authorized in WAC 110-15-0240 and the applicable special needs rate listed in WAC ((~~170-290-0235~~)) 110-15-0235.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4565 What is the maximum child care subsidy rate ((~~CA~~)) DCYF pays for in-home/relative child

care? ((~~CA~~)) DCYF pays the cost of child care directly to the provider as the rate specified in WAC ((~~170-290-0240~~)) 110-15-0240.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4575 What is the responsibility of ((~~DSHS~~)) DCYF regarding child care subsidies for in-home/relative child care? (1) On all payments ((~~DSHS~~)) DCYF makes toward the cost of in-home/relative child care, ((~~DSHS~~)) DCYF pays the employer's share of:

(a) Social Security taxes;

(b) Medicare taxes;

(c) Federal Unemployment Taxes (FUTA); and

(d) State unemployment taxes (SUTA) when applicable.

(2) On all payments ((~~DSHS~~)) DCYF makes toward the cost of in-home/relative child care ((~~DSHS~~)) DCYF withholds the following taxes:

(a) Social security taxes up to the wage base limit; and

(b) Medicare taxes.

(3) If an in-home/relative child care provider receives less than ((~~one thousand one hundred dollars~~)) the per family threshold allowed by *Internal Revenue Service Publication 926, Household Employer's Tax Guide*, in a calendar year, ((~~DSHS~~)) DCYF refunds all withheld taxes to the provider.

AMENDATORY SECTION (Amending WSR 19-14-078, filed 7/1/19, effective 7/1/19)

WAC 110-15-4580 When can ((~~DSHS~~)) DCYF pay toward the cost of in-home/relative child care provided outside the child's home? ((~~DSHS~~)) DCYF will pay toward the cost of child care provided in the relative's home by the following adult relative of the child:

(1) Siblings and stepsiblings living outside the child's home;

(2) Grandparents;

(3) Aunts;

(4) Uncles;

(5) First cousins;

(6) Great grandparents;

(7) Great aunts;

(8) Great uncles; and

(9) Extended family members as determined by law or custom of the Indian child's tribe.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-15-4515	When are DSHS child care subsidy rates in this chapter effective?
WAC 110-15-4535	What is nonstandard hour child care?
WAC 110-15-4545	How does DSHS determine that a child qualifies for a special needs rate?