

**WSR 23-23-136
EMERGENCY RULES****DEPARTMENT OF HEALTH**

[Filed November 17, 2023, 3:14 p.m., effective November 17, 2023, 3:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amending the definition of mental health professional and creating certified agency affiliated counselor (C-AAC) and licensed agency affiliated counselor (L-AAC) credentials.

Amending WAC 246-341-0200 and 246-341-0515 in chapter 246-341 WAC, Behavioral health agency licensing and certification requirements, and WAC 246-810-010, 246-810-015, and 246-810-990 in chapter 246-810 WAC, Counselors.

2SHB 1724 (chapter 425, Laws of 2023) made several immediate changes impacting behavioral health agencies, including amending the definition of "mental health professional" (MHP) and creating two new agency affiliated counselor (AAC) credentials. Because 2SHB 1724's amendments to the MHP definition and AAC credentials went into effect immediately and were designated as necessary for the immediate preservation of the public health, safety, or general welfare, the department of health (department) implemented these changes by emergency rule under WSR 23-16-031, filed on July 21, 2023.

This emergency rules continues without change the original emergency rule. The emergency rule:

- Amends chapter 246-341 WAC to address language that conflicts with 2SHB 1724, deleting an outdated definition of MHP requirements and updating an incorrect cross-reference.
- Amends chapter 246-810 WAC to expand existing language to establish two new credentials, C-AAC and L-AAC. The amendments align rule language with statute and revise the registered AAC fees to apply to all AAC types.

The emergency rules will be continued while permanent rule making is in progress under WSR 23-16-044, filed on July 25, 2023.

Citation of Rules Affected by this Order: Amending WAC 246-341-0200, 246-341-0515, 246-810-010, 246-810-015, and 246-810-990.

Statutory Authority for Adoption: RCW 18.19.050, 71.24.037.

Other Authority: 2SHB 1724 (chapter 425, Laws of 2023).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The legislature established in 2SHB 1724, section 33, that many sections of the bill are "necessary for the immediate preservation of the public peace, health, or support of the state government and its existing public institutions and take effect immediately." Sections 13 through 20, which create the new AAC credentials and amends the definition of MHP, are among the sections that became effective immediately.

Under 2SHB 1724, RCW 71.05.020 was amended to define an MHP as an individual practicing within their credential's scope of practice. Qualifying credentials include the certified and licensed AAC credential, but not the current AAC registration. Prior to the passage of 2SHB 1724, many MHPs performed assessments and made diagnoses with only a registration. After 2SHB 1724 became effective, however, they

were required to obtain an AAC certification, AAC license, or other qualifying credential in order to continue providing these services. Establishing the new AAC credentials immediately by emergency rule and continuing these emergency rules allows MHPs to transition into the new credentials and continue providing essential behavioral health services while permanent rules are in progress.

If the department had waited to make these amendments through standard rule making, MHPs with an AAC registration would be both unable to continue assessing and diagnosing due to the changed MHP definition and unable to obtain a higher AAC credential that would allow them to continue that work. Continuing these emergency rules will allow MHPs who are AACs to continue serving Washington residents with behavioral health needs.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: November 17, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4676.1

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0200 Behavioral health—Definitions. The definitions in this section and RCW 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the designated person responsible for the day-to-day operation of either the licensed behavioral health agency, or certified treatment service, or both.

(2) "Adult" means an individual 18 years of age or older. For purposes of the medicaid program, adult means an individual 21 years of age or older.

(3) "ASAM criteria" means admission, continued service, transfer, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

(4) "Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and

family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

(5) "Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, co-occurring disorders, or problem gambling and gambling disorders.

(6) "Behavioral health agency," "licensed behavioral health agency," or "agency" means an entity licensed by the department to provide behavioral health services under chapter 71.24, 71.05, or 71.34 RCW.

(7) "Behavioral health service" means the specific service(s) that may be provided under an approved certification.

(8) "Branch site" means a physically separate licensed site, governed by the same parent organization as the main site, where qualified staff provides certified treatment services.

(9) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the agency is located.

(10) "Care coordination" or "coordination of care" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

(11) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific types of behavioral health services included under the certification category.

(12) "Child," "minor," and "youth" mean:

(a) An individual under the age of 18 years; or

(b) An individual age 18 to 21 years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age 18 to 21 years who receives EPSDT services is not considered a "child" for any other purpose.

(13) "Clinical supervision" means regular and periodic activities performed by a mental health professional, co-occurring disorder specialist, or substance use disorder professional licensed, certified, or registered under Title 18 RCW. Clinical supervision may include review of assessment, diagnostic formulation, individual service plan development, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care. In the context of this chapter, clinical supervision is separate from clinical supervision required for purposes of obtaining supervised hours toward fulfilling requirements related to professional licensure under Title 18 RCW.

(14) "Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

(15) "Consent" means agreement given by an individual after being provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible

risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the individual can reasonably be expected to understand. Consent can be obtained from an individual's parent or legal representative, when applicable.

(16) "Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

(17) "Co-occurring disorder" means the coexistence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

(18) "Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

(19) "Deemed" means a status that is given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with the department.

(20) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

(a) Has a record of such an impairment; or

(b) Is regarded as having such impairment.

(21) "Face-to-face" means either in person or by way of synchronous video conferencing.

(22) "Individual service record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent behavioral health, medical, and clinical information for each individual served.

(23) "Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem gambling and gambling disorder treatment programs under RCW 43.70.080(5) and 41.05.750.

(24) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW.

(25) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(26) "Mental health professional" or "MHP" means a person who meets the (~~qualifications in WAC 246-341-0515 (4)~~) definition in RCW 71.05.020.

(27) "Peer counselor" means the same as defined in WAC 182-538D-0200.

(28) "Peer support" means services provided by peer counselors to individuals under the supervision of a mental health professional or individual appropriately credentialed to provide substance use disorder treatment. Peer support provides scheduled activities that promote recovery, self-advocacy, development of natural supports, and maintenance of community living skills.

(29) "Problem gambling and gambling disorder" means one or more of the following disorders:

(a) "Gambling disorder" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of gambling disorder that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

(30) "Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment or support services, progress in recovery, and progress toward intended outcomes.

(31) "Secretary" means the secretary of the department of health.

(32) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.

(33) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.

(34) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.

(35) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

(36) "Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

(37) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0515 Personnel—Agency staff requirements. Each behavioral health agency must ensure that all of the following staff requirements are met:

(1) All staff providing clinical services are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement.

(2) All staff providing clinical services receive clinical supervision.

(3) An agency providing group counseling or group therapy must have a staff ratio of at least one staff member to every 16 individuals during group counseling or therapy sessions.

(4) ~~((A mental health professional is:~~

~~(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;~~

~~(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or~~

~~(c) An agency staff member with a designation given by the department or an attestation by the licensed behavioral health agency that the person meets the following:~~

~~(i) Holds a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;~~

~~(ii) Who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or~~

~~(iii) Who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.~~

~~(5)) An agency providing problem gambling and gambling disorder treatment services must ensure staffing in accordance with WAC 246-341-1200.~~

OTS-4679.2

AMENDATORY SECTION (Amending WSR 11-22-087, filed 11/1/11, effective 12/2/11)

WAC 246-810-010 Definitions. The definitions in this section apply throughout this chapter unless the content clearly requires otherwise.

(1) "Agency" means:

(a) An agency or facility operated, licensed, or certified by the state of Washington to provide a specific counseling service or services;

(b) A federally recognized Indian tribe located within the state; or

(c) A county as listed in chapter 36.04 RCW.

(2) "Agency affiliated counselor" means a person registered, certified, or licensed under chapter 18.19 RCW, and this chapter, who is

engaged in counseling and employed by an agency listed in WAC 246-810-016 or an agency recognized under WAC 246-810-017 to provide a specific counseling service or services.

(3) "Certified adviser" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-021.

(4) "Certified counselor" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-0201.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

(6) "Consultation" means the professional assistance and practice guidance that a certified counselor receives from a counseling-related professional credentialed under chapter 18.130 RCW. This may include:

(a) Helping the certified counselor focus on counseling practice objectives;

(b) Refining counseling modalities;

(c) Providing support to progress in difficult or sensitive cases;

(d) Expanding the available decision-making resources; and

(e) Assisting in discovering alternative approaches.

(7) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist, or attempt to assist, an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purpose of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(8) "Counselor" means an individual who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, agency affiliated counselors, certified counselors, certified advisers, hypnotherapists, and until July 1, 2010, registered counselors.

(9) "Department" means the Washington state department of health.

(10) "Fee" as referred to in RCW 18.19.030 means compensation received by the counselor for counseling services provided, regardless of the source.

(11) "Hypnotherapist" means a person registered under chapter 18.19 RCW, and this chapter, who is practicing hypnosis as a modality.

(12) "Licensed health care practitioner" means a licensed practitioner under the following chapters:

(a) Physician licensed under chapter 18.71 RCW.

(b) Osteopathic physician licensed under chapter 18.57 RCW.

(c) Psychiatric registered nurse practitioner licensed under chapter 18.79 RCW.

(d) Naturopathic physician licensed under chapter 18.36A RCW.

(e) Psychologist licensed under chapter 18.83 RCW.

(f) Independent clinical social worker, marriage and family therapist, or advanced social worker licensed under chapter 18.225 RCW.

(13) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in WAC 246-810-0201 or 246-810-021.

(14) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(15) "Recognized" means acknowledged or formally accepted by the secretary.

(16) "Recognized agency or facility" means an agency or facility that has requested and been recognized under WAC 246-810-017 to employ agency affiliated counselors to perform a specific counseling service, or services for those purposes only.

(17) "Secretary" means the secretary of the department of health or the secretary's designee.

(18) "Supervision" means the oversight that a counseling-related professional credentialed under chapter 18.130 RCW provides.

(19) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-810-015 Agency affiliated counselor: Scope of practice and credentialing requirements.

(1) ~~((An))~~ (a) A registered agency affiliated counselor may only provide counseling services as part of ~~((his or her))~~ their employment ~~((as an agency affiliated counselor))~~ for a recognized agency.

(b) A certified agency affiliated counselor may provide counseling services and may provide provisional mental health assessment and diagnosis services under supervision as required by chapter 18.19 RCW, and as part of their employment for a recognized agency.

(c) A licensed agency affiliated counselor may provide counseling services, independently conduct mental health assessments, and make mental health diagnoses as part of their employment for a recognized agency.

(2) An applicant for ~~((an))~~ any agency affiliated counselor credential must be employed by, or have an offer of employment from, an agency or facility identified in WAC 246-810-016.

(3) (a) An applicant for a certified agency affiliated counselor credential must meet the education and experience requirements of RCW 18.19.090(3).

(b) An applicant for a licensed agency affiliated counselor credential must meet the education and experience requirements of RCW 18.19.090(4).

(4) (a) Applicants must submit an application to the department within the first ~~((thirty))~~ 30 days of employment at an agency in order to continue working while the application is processed.

(b) Applicants must complete any outstanding deficiencies within ~~((ninety))~~ 90 days of the date the department issues a deficiency letter. If the applicant does not satisfy the outstanding licensure requirements within ~~((ninety))~~ 90 days, the applicant must stop working.

AMENDATORY SECTION (Amending WSR 23-07-057, filed 3/9/23, effective 6/1/23)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, a counselor must renew their credential every year on the practitioner's birthday.

(2) Examination and reexamination fees are the responsibility of the applicant and are paid directly to the testing company.

(3) The following nonrefundable fees will be charged:

Title	Fee
Registered hypnoterapist:	
Application and registration	\$155.00
Renewal	\$80.00
Late renewal penalty	\$75.00
Expired registration reissuance	\$75.00
Duplicate registration	\$10.00
Verification of registration	\$25.00
Certified counselor:	
Application and certification	\$680.00
Examination or reexamination	\$85.00
Renewal	\$800.00
Late renewal penalty	\$300.00
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
Certified adviser:	
Application and certification	\$620.00
Examination or reexamination	\$85.00
Renewal	\$745.00
Late renewal penalty	\$300.00
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
((Registered)) <u>Agency affiliated counselor:</u>	
Application and ((registration)) <u>credentialing</u>	\$175.00
Renewal	\$185.00
Late renewal penalty	\$95.00
Expired ((registration)) <u>credential</u> reissuance	\$50.00
Duplicate ((registration)) <u>credential</u>	\$10.00
Verification of ((registration)) <u>credential</u>	\$25.00