

## WSR 24-06-066

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed March 4, 2024, 5:25 p.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-019.

Title of Rule and Other Identifying Information: Home care aide workforce, reducing barriers. The department of health (department) is considering rule making to implement legislation to increase the home care aide workforce by amending WAC 246-980-010, 246-980-025, 246-980-040, 246-980-100, 246-980-110, 246-980-115, and 246-980-140; and creating WAC 246-980-045. The department is considering amending chapter 246-980 WAC to align with statutory changes and implement E2SHB 1694 (chapter 424, Laws of 2023), and E2SSB 5278 (chapter 323, Laws of 2023). These bills address date of hire, the home care aide workforce, certification examinations, and other aspects of the profession.

Hearing Location(s): On April 16, 2024, at 11:00 a.m., at the Department of Health, 111 Israel Road S.E., TC2 Room 166 and 167, Tumwater, WA 98501; or virtually via Zoom. Register in advance for this webinar. After registering you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 23, 2024.

Submit Written Comments to: Jennifer Osbun, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview/>, by April 16, 2024.

Assistance for Persons with Disabilities: Contact Jennifer Osbun, phone 360-236-2737, TTY 711, email [homecareaide@doh.wa.gov](mailto:homecareaide@doh.wa.gov), by April 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 5278 requires the department to develop systems to reduce delays between training and testing, including establishing rules regarding the number of times and under what circumstances individuals may take the exam. These proposed rules update the process for applying for a home care aide credential to allow applicants to schedule their own examination directly with the examination vendor at the time of application, rather than waiting for the department to authorize them to sit for the exam. These proposed rules also allow caregivers three retakes of the exam, rather than two, and allow home care aides that are expired more than five years to either retake training or retake the exam, rather than requiring them to do both. The proposed changes meet the intent of the legislation to reduce barriers for home care aide certification.

E2SHB 1694 updated the definition of "date of hire." This requires the department to also update that definition within the rule. E2SHB 1694 also updated continuing education (CE) requirements for credentials expired five years or less. The department must update the current CE requirements to align with this legislative update. E2SHB 1694 also updated the list of family members that a caregiver can provide care to without requiring a credential. In turn, the department is amending the exemption section of the rule to align with that legislative change.

Reasons Supporting Proposal: E2SHB 1694 amended RCW 18.88B.010 to define date of hire and RCW 18.88B.021 to define multiple dates of hire. E2SHB 1694 also created a new section in chapter 18.88B RCW on renewing and reinstating an expired credential, created a new section

in chapter 18.88B RCW to allow an auto-renewal process for those with a credential expired more than six months and less than two years effective from September 1, 2023, and expiring July 1, 2025, and made additional changes to department of social and health services statutes.

E2SSB 5278 amended RCW 18.88B.031 to remove the requirement that training be completed prior to taking the certification examination, allowing students to take the certification examination during or after completing the training.

The department, in alignment with the intent of E2SHB 1694 and E2SSB 5278, is proposing rules that reduce barriers to entering and remaining in the home care aide workforce, including streamlining the certification examination and the credentialing process.

Statutory Authority for Adoption: RCW 18.88B.021, 18.88B.031, 18.88B.041, and 18.88B.060.

Statute Being Implemented: E2SHB 1694, E2SSB 5278.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Osbun, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2737.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Osbun, P.O. Box 47850, Olympia, WA 98504-7850, phone 360-236-2737, TTY 711, email jennifer.osbun@doh.wa.gov, homecareaide@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments affect home care aides, not small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

March 4, 2024  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

## OTS-5130.2

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

**WAC 246-980-010 Definitions.** The definitions in this section and in RCW 74.39A.009 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Activities of daily living" means self-care abilities related to personal care such as bathing, body care, bed mobility, eating,

locomotion, medication assistance, use of the toilet, personal hygiene, dressing, and transfer.

(2) "Date of hire" means ~~((~~

~~(a) The date of service authorization for individual providers hired by the department of social and health services; or~~

~~(b)) the first day the long-term care worker is employed by any employer as a long-term care worker or the date the long-term care worker provides direct care for pay from any employer ((, other than the department of social and health services;~~

~~(c) The date of hire is specific to each long-term care worker, not to the employer, and does not change if a long-term care worker changes employers. If a long-term care worker is or has been employed by more than one employer, the earliest date of hire will be the date of hire for that worker)).~~

(3) "Department" means the department of health.

(4) "Direct care worker" means a paid caregiver who provides hands-on personal care services to individuals with disabilities or the elderly requiring long-term care.

(5) "Instrumental activities of daily living" means routine activities performed in the home or the community such as meal preparation, shopping, house cleaning, laundry, maintaining employment, travel to medical services, use of the telephone, and management of personal finances.

(6) "Medication assistance" has the same meaning as ~~((chapter 246-888 WAC))~~ RCW 69.41.010.

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

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

**WAC 246-980-025 Individuals exempt from obtaining a home care aide certification.** (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they ~~((must))~~ shall successfully pass the entry level training required by RCW 74.39A.074 and meet the requirements of WAC 246-980-040 ~~((~~(1)(b) and (e))~~)).~~

(a) An individual provider caring only for a biological, step, or adoptive child or parent.

(b) An individual provider caring only for a sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild (including by marriage or domestic partnership).

(c) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States Department of Veterans Affairs home and community-based programs.

(d) An individual provider who provides ~~((twenty))~~ 20 hours or less of care for one person in any calendar month.

~~((e))~~ (e) An individual employed by a community residential service business.

~~((d))~~ (f) An individual employed by a residential habilitation center licensed under chapter 71A.20 RCW or a facility certified under 42 C.F.R. Part 483.

~~((e))~~ (g) A direct care worker who is not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

~~((f))~~ (h) A person working as an individual provider who only provides respite services and works less than ~~((three hundred))~~ 300 hours in any calendar year.

~~((g))~~ (i) Any direct care worker exempt under RCW 18.88B.041(1).

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must meet the requirements of WAC 246-980-040 ~~((1)(b) and (c))~~. The training requirements under RCW 74.39A.074(1) are not required.

(a) An individual who holds an active credential by the department as a:

(i) Registered nurse, a licensed practical nurse, or advanced registered nurse practitioner under chapter 18.79 RCW; or

(ii) Nursing assistant-certified under chapter 18.88A RCW.

(b) A home health aide who was employed by a medicare certified home health agency within the year before being hired as a long-term care worker and has met the requirements of 42 C.F.R. Part 484.36.

(c) A person who is in an approved training program for certified nursing assistant under chapter 18.88A RCW, provided that the training program is completed within ~~((one hundred twenty))~~ 120 calendar days of the date of hire and that the nursing assistant-certified credential has been issued within ~~((two hundred))~~ 200 calendar days of the date of hire.

(d) An individual with special education training and an endorsement granted by the superintendent of public instruction under RCW 28A.300.010 and is approved by the secretary.

(e) An individual employed as a long-term care worker on January 6, 2012, or who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, and who completed all of the training requirements in effect as of the date of hire. This exemption expires if the long-term care worker has not provided care for three consecutive years.

(i) The department may require the exempt long-term care worker who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker between January 1, 2011, and January 6, 2012, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. Proof of training will also be accepted directly from the approved instructor or training program, if applicable.

(ii) For an individual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the training partnership.

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

**WAC 246-980-040 Certification requirements.** ~~((1))~~ To qualify for certification as a home care aide, the applicant ~~((must))~~ shall:

~~((a))~~ (1) Successfully complete all training required by RCW 74.39A.074(1) within ~~((one hundred twenty))~~ 120 calendar days of the date of hire as a long-term care worker;

~~((b))~~ (2) Successfully pass the home care aide certification examination, after completing training; and

~~((e))~~ (3) Become certified within ~~((two hundred))~~ 200 days of date of hire, or ~~((two hundred sixty))~~ 260 days if granted a provisional certificate under RCW 18.88B.041.

~~((2) An applicant for certification as a home care aide must submit to the department:~~

~~(a) A completed application for both certification and the examination on forms provided by the department;~~

~~(b) The exam fee set by the examination vendor and required fees under WAC 246-980-990; and~~

~~(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.074. The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.~~

~~(3) An applicant must submit to a state and federal background check as required by RCW 74.39A.056.~~

~~(4) An applicant exempt from certification under WAC 246-980-025(2) who voluntarily chooses to be certified must provide documentation of qualification for the exemption. The applicant is not required to take the training required in subsection (1)(a) of this section or provide proof of training completion to the department.)~~

#### NEW SECTION

**WAC 246-980-045 Application requirements.** (1) An applicant for certification as a home care aide shall submit to the department:

(a) A completed application on forms provided by the department;

(b) The required fees under WAC 246-980-990; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.074. The certificate of completion or other official verification may be submitted directly from the approved instructor or training program.

(2) An applicant must submit to a state and federal background check as required by RCW 74.39A.056 and 18.130.064.

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

**WAC 246-980-100 Examination and reexamination for home care aide certification.** (1) The certification examination will consist of both a written knowledge test and a skills demonstration.

(2) The certification examination will test the core competencies ~~((r))~~ including, but not limited to:

(a) Communication skills;

(b) Worker self-care;

(c) Problem solving;

(d) Maintaining dignity;

(e) Consumer directed care;

(f) Cultural sensitivity;

(g) Body mechanics;

- (h) Fall prevention;
- (i) Skin and body care;
- (j) Home care aide roles and boundaries;
- (k) Supporting activities of daily living; and
- (l) Food preparation and handling.

(3) ~~((An applicant must apply to take the examination by completing the application for both certification and the examination and returning it to the department.))~~ The department will notify the examination contractor once an applicant meets ~~((all))~~ requirements to take the certification examination.

(4) The applicant shall contact the examination contractor ((will notify an applicant of the date, time, and place of)) to schedule the examination and submit payment, if required. The examination fees are set by the vendor.

(5) The examination contractor will notify both the department and an applicant of the examination results.

~~((a))~~ (6) An applicant who does not successfully pass any portion of the examination ~~((can))~~ may follow the examination contractor's procedures for review and appeal.

~~((b))~~ (7) An applicant who does not successfully pass any portion of the examination may retake that portion of the examination ~~((two))~~ three times.

~~((i))~~ (a) To retake the examination, an applicant ~~((must submit an application for reexamination, along with the required reexamination fee directly to the examination contractor.))~~

~~((ii))~~ An application for reexamination may be submitted) shall contact the examination contractor to:

(i) Schedule a new exam; and

(ii) Pay the reexamination fee.

(b) An applicant may schedule a reexamination any time after ~~((an applicant receives))~~ notice of not successfully completing any portion of the certification examination.

(c) An applicant who does not successfully pass both portions of the certification examination ~~((within two years of successfully completing the required training or who does not successfully pass both portions of the certification examination after completing the certification examination three))~~ after four consecutive times:

(i) ~~((Must))~~ Shall retake and successfully complete the core competencies portion of the entry-level training as required by RCW 74.39A.074 before retaking both portions of the certification examination; and

(ii) Cannot continue to provide care as a long-term care worker until the certification has been issued.

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

**WAC 246-980-110 Continuing education.** (1) A home care aide ~~((must))~~ shall demonstrate completion of ~~((twelve))~~ 12 hours of continuing education per year as required by RCW 74.39A.341. The required continuing education must be obtained during the period between renewals. Continuing education is subject to the provisions of ~~((chapter 246-12 WAC, Part 7))~~ WAC 246-12-170 through 246-12-240.

(2) Verification of completion of the continuing education requirement is due upon renewal of an active credential. If the first

renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

(3) No continuing education is required for renewal of a credential that has been expired five years or less.

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

**WAC 246-980-115 Renew or reinstate an expired certification.**

(1) To renew a home care aide certification the practitioner (~~(must)~~) shall:

(a) Renew the certification every year by the home care aide's birthday as provided in (~~chapter 246-12 WAC, Part 2~~) WAC 246-12-020 through 246-12-051;

(b) Submit a completed application as provided by the department; and

(c) Provide verification of (~~twelve~~) 12 hours of continuing education as required by RCW 74.39A.341 and WAC 246-980-110 with the renewal application.

(2) To reinstate an expired certification:

(a) If the certification has been expired for (~~less than three years~~) five years or less, the practitioner (~~must submit proof of twelve continuing education hours as required by RCW 74.39A.341 and WAC 246-980-110 for each year it has been expired, and~~) shall meet the requirements of (~~chapter 246-12 WAC, Part 2~~) WAC 246-12-040.

(b) If the certification has been expired for (~~three years or~~) more than five years, the practitioner (~~must~~) shall successfully repeat the training (~~and~~) requirements or the examination requirements in WAC 246-980-040 and meet the requirements of (~~chapter 246-12 WAC, Part 2~~) WAC 246-12-020 through 246-12-051.

(~~(c) A practitioner previously exempt from certification by WAC 246-980-025(2) who voluntarily chooses to be certified is not required to complete training to reinstate a certification expired over three years so long as they continue to be exempt under WAC 246-980-025(2) at the time of reapplying.~~)

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

**WAC 246-980-140 Scope of practice for long-term care workers.**

(1) A long-term care worker performs activities of daily living or activities of daily living and instrumental activities of daily living. A person performing only instrumental activities of daily living is not acting under the long-term care worker scope of practice.

(a) "Activities of daily living" means self-care abilities related to personal care such as bathing, eating, medication assistance, using the toilet, dressing, and transfer. This may include fall prevention, skin and body care.

(b) "Instrumental activities of daily living" means activities in the home and community including cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) A long-term care worker documents observations and tasks completed, as well as communicates observations.

(3) A long-term care worker may perform medication assistance as described in (~~chapter 246-888 WAC~~) RCW 69.41.010.

(4) A long-term care worker may perform nurse delegated tasks, to include medication administration, if he or she meets and follows the requirements in WAC 246-980-130.

(5) A long-term care worker may provide skills acquisition training on instrumental activities of daily living and the following activities of daily living tasks: Dressing, application of deodorant, washing hands and face, hair washing, hair combing and styling, application of makeup, menses care, shaving with an electric razor, tooth brushing or denture care, and bathing tasks excluding any transfers in or out of the bathing area.

(6) This section applies to all long-term care workers, whether required to be certified or exempt.