

**WSR 21-01-018**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed December 3, 2020, 12:47 p.m., effective December 3, 2020, 12:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-71-0975 Who is required to obtain certification as a home care aide, and when?, to clarify how to interpret the long-term care (LTC) worker qualifications and requirements in statute and rule that have specific time periods for compliance when there has been a period of time in which the underlying requirements were suspended and waived in whole or part by emergency proclamation by the governor.

Citation of Rules Affected by this Order: Amending WAC 388-71-0975.

Statutory Authority for Adoption: RCW 74.09.520.

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: An adequate number of LTC workers is necessary to provide essential services to the more than one hundred twenty-nine thousand vulnerable adults receiving services in their own homes and facilities in Washington state. Due to the widespread impacts of the COVID-19 pandemic, LTC workers have been unable to complete their training and certification requirements due to disruptions and closures of classes and testing sites, and unable to complete their required fingerprint checks due to delays and interruptions in operations by third party fingerprinting vendors. In response, the governor issued Proclamations 20-10 and 20-18 which suspended certain training, testing, and fingerprint requirements.

Currently more than twenty-five thousand LTC workers have been unable to meet one or more of their requirements and when the governor's proclamations and their extensions expire, without emergency WAC in place to allow providers adequate time for training, testing and fingerprinting, LTC workers who haven't met their requirements will have to be immediately dismissed leaving some of the state's most vulnerable citizens without access to critical LTC services.

With the governor's Safe Start reopening plan, training, testing, and fingerprint locations are beginning to reopen allowing some LTC workers to work on meeting the requirements. However the phased reopening impacts the capacity of training and testing sites. Many key testing sites are down and sites that are able to test have reduced capacity to fifty percent of previous levels. In-person skills exams are being modified for safety and some local training locations are either closed due to ongoing issues with the pandemic or cannot accommodate social distancing.

All of these issues will delay the ability of the LTC workforce to meet requirements quickly and without emergency rules that allow the LTC workforce adequate time for training, testing, and fingerprinting, vulnerable adults run the risk of going without critical LTC services, staffing shortages in the LTC workforce are inevitable, and

the state runs the risk of federal disallowances if LTC workers are allowed to work without rules in place.

This emergency rule is intended to be remedial and curative. It is needed to clarify how to interpret the LTC worker qualifications and requirements in statute and rule that have specific time periods for compliance where there has been a period of time where the underlying requirements were suspended and waived in whole or part by emergency proclamation by the governor.

To be eligible for federal matching funds under the medicaid program, services must be provided by qualified providers. Under the Washington state plan, many of the qualifications are found in statute and rule. Without these emergency rules there is a risk that LTC workers who have been unable to comply during the pandemic will suddenly not be qualified to provide medicaid funded services. This will leave vulnerable adults without the services they are eligible to receive when the governor's Emergency Proclamation 20-10 and 20-18, and all extensions thereto, expire.

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

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

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

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

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

Date Adopted: December 2, 2020.

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#### SHS-4840.4

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

**WAC 388-71-0975 Who is required to obtain certification as a home care aide, and by when?** In order to be authorized to provide department paid in-home services, all long-term care workers ((, who do not fall within the exemptions under the department of health WAC 246-980-070,)) must obtain home care aide certification ((within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 7, 2012)) as provided in chapter 246-980 WAC.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0975, filed 12/20/12, effective 1/20/13.]