

WSR 21-06-011

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 18, 2021, 7:28 p.m., effective March 21, 2021]

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

Purpose: WAC 246-828-025 and 246-828-290 hearing and speech. The department of health (department), in consultation with the board of hearing and speech (board), is amending WAC 246-828-025 and 246-828-290 to implement ESB 5210 (chapter 183, Laws of 2019) addressing consumer notification of assistive hearing technologies.

Citation of Rules Affected by this Order: Amending WAC 246-828-025 and 246-828-290.

Statutory Authority for Adoption: RCW 18.35.310.

Adopted under notice filed as WSR 20-19-146 on September 23, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-828-025(3): The definition of "hearing assistive technologies" is clarified to include "other technologies" as appropriate and that all such technologies are to improve sound quality or clarity of speech or sounds "with or without the presence of background noise."

WAC 246-828-290(4): The standard customer form was amended to add clarity, keep the language concise, and not be overly burdensome on the providers. Language was also added to clarify the customer must be notified orally and in writing.

A final cost-benefit analysis is available by contacting Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: February 13, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

OTS-2126.2

AMENDATORY SECTION (Amending WSR 19-13-041, filed 6/12/19, effective 7/13/19)

WAC 246-828-025 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the council on academic accreditation in audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province. Institutions where education was obtained outside of the United States or Canada has an equivalency determination completed by the board. This program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.

(c) A board-approved institution must integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Direct supervision" means the supervisor is on-site and in view during the procedures or tasks.

(3) "Hearing assistive technologies" means assistive listening systems or devices, and other technologies that increase the intelligibility, improves sound quality, or clarity of speech or sounds with or without the presence of background noise where hearing instruments alone may not provide optimal comprehension including, but not limited to, telecoil and Bluetooth.

(4) "Indirect supervision" means the procedures or tasks are performed under the supervising speech-language pathologist's, audiologist's, or hearing aid specialist's overall direction and control and the supervisor is accessible, but the supervisor's presence is not required during the performance of procedures or tasks.

~~((4))~~ (5) "Place or places of business" means a permanent address open to the public, which may include an "establishment" as defined in RCW 18.35.010(6), where a licensee engages in the fitting and dispensing of hearing instruments.

~~((5))~~ (6) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct patient or client contact, consultations, recordkeeping, and administrative duties relevant to a bona fide program of clinical work. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

~~((6))~~ (7) "Purchaser" or "buyer" means a patient, client, or legally authorized representative.

[Statutory Authority: RCW 18.35.161. WSR 19-13-041, § 246-828-025, filed 6/12/19, effective 7/13/19. Statutory Authority: 2014 c 189, RCW 18.35.161, 18.130.062, and 18.130.020. WSR 15-14-092, § 246-828-025, filed 6/29/15, effective 7/1/15. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-025, filed 7/20/10, effective

7/26/10. Statutory Authority: RCW 18.35.161. WSR 06-19-109, § 246-828-025, filed 9/20/06, effective 10/21/06. Statutory Authority: RCW 18.35.040(2) and 18.35.161. WSR 98-13-109, § 246-828-025, filed 6/17/98, effective 7/18/98.]

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-290 Purchaser rescission rights and right to notice of hearing assistive technologies. In addition to the receipt and disclosure information required by RCW 18.35.030, 18.35.185, 63.14.040 and 63.14.120, every retail agreement for the sale of hearing instruments must contain or have attached the following notice to buyer in twelve point font or larger. The language in part 1 under "Notice to Buyer" is intended to have the same legal effect as the notices required in RCW 63.14.040(2) and 63.14.120(3) and may be substituted for those notices.

The rights summarized in the "Notice to Buyer" must be made known to the purchaser before the contract is executed. The licensee must provide this "Notice to Buyer" in writing to the purchaser. The purchaser must acknowledge receipt of the "Notice to Buyer" by signing his or her name in the designated space following the "Notice to Buyer."

Notice to Buyer

NOTICE TO BUYER UNDER WASHINGTON STATE LAW CHAPTER 18.35 RCW

Do not sign this agreement before you read it or if any spaces intended for the agreed terms are blank. You are entitled to receive a copy of this agreement at the time you sign it. The seller's business address must be shown on the agreement.

Section 1 CANCELLATION - WITHIN THREE DAYS

You may cancel this agreement within three days, without explaining your reasons, if the seller solicited it in person and you signed it at a place other than the seller's business address.

To cancel this agreement without explaining your reasons, you must notify the seller in writing that you are canceling the agreement. You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be postmarked or delivered by midnight of the third business day after you signed this agreement.

Any merchandise you received under this agreement must be in its original condition. You must return it to the seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement.

You will incur no additional liability for canceling the agreement.

Section 2 RESCISSION - WITHIN THIRTY DAYS

You may rescind (or terminate) the agreement within thirty days, for reasonable cause. This thirty-day period is called the "rescission period."

To rescind this agreement, you must notify the seller in writing that you are rescinding the agreement for reasonable cause pursuant to RCW 18.35.185(1). (Reasonable cause does not include cosmetic concerns or a mere change of mind.) You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be postmarked or delivered by midnight of the thirtieth day after delivery of the hearing instrument.

Any merchandise you received under this agreement must be in its original condition, except for normal wear and tear. You must return it to the seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement. However, for each hearing instrument you return, the seller may keep either one hundred fifty dollars or fifteen percent of the total purchase price, whichever is less, plus the price originally charged for custom-made earmolds.

The seller must refund your money and return your traded goods, or have them postmarked and in the mail to you, within ten business days after receiving your notice of rescission.

You will incur no additional liability for rescinding the agreement.

Section 3 EXTENSION OF RESCISSION PERIOD

If you notify the seller within the thirty-day rescission period that your hearing instrument has developed a problem that constitutes reasonable cause to rescind the agreement or that prevents you from evaluating your hearing instrument, the seller must extend the rescission period. The rescission period stops running on the date you notify the seller of the problem and starts running again on the date the seller notifies you that your hearing instrument is ready for redelivery.

You and the seller may agree to a rescission period longer than thirty days.

Whenever the rescission period is extended, the seller must provide you written notice of the last date upon which you may demand a refund and return of traded goods.

Section 4 NOTICE OF HEARING ASSISTIVE TECHNOLOGIES

Prior to initial fitting and purchase you must be informed, both orally and in writing, about the uses, benefits, and limitations of current hearing assistive technologies. Hearing assistive technologies can supplement your hearing instrument and increase the intelligibility and clarity of speech in environments where hearing instruments alone may not provide optimal comprehension. Hearing assistive technology options can enable hearing instruments to connect with phones, computers, electronic sound sources, and assistive listening systems, including the assistive listening systems, compliant with the Americans with Disabilities Act.

I am aware that the hearing instrument(s) referenced in this document include (please select all that apply):

Telecoil
 Bluetooth
 Other technology (specify) _____

By signing this receipt, you acknowledge that you have been informed of your rescission rights and your rights under Section 4 of this section, to receive oral and written information about hearing assistive technologies and that you have read and understand these rights.

_____	_____
Signature of Purchaser	Date
_____	_____
Signature of Seller	Date
_____	_____
Delivery Acknowledgment - Signature of Purchaser	Date

[Statutory Authority: 2014 c 189, RCW 18.35.161, 18.130.062, and 18.130.020. WSR 15-14-092, § 246-828-290, filed 6/29/15, effective 7/1/15. Statutory Authority: RCW 18.35.161. WSR 04-02-068, § 246-828-290, filed 1/7/04, effective 2/7/04; WSR 02-14-052, § 246-828-290, filed 6/27/02, effective 7/28/02. Statutory Authority: RCW 18.35.161 and 18.35.185(2). WSR 99-08-103, § 246-828-290, filed 4/6/99, effective 7/5/99. Statutory Authority: RCW 18.35.161. WSR 91-11-031 (Order 165B), recodified as § 246-828-290, filed 5/8/91, effective 6/8/91; WSR 86-09-064 (Order PL 586), § 308-50-330, filed 4/17/86; Order PL 190, § 308-50-330, filed 5/23/75; Order PL 159, § 308-50-330, filed 2/8/74.]