

WSR 22-13-105

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed June 15, 2022, 11:57 a.m., effective June 15, 2022, 11:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-980-030, 246-980-040, and 246-980-065 in chapter 246-980 WAC, Home care aides; and adopting new WAC 246-980-011. Due to impacts from the coronavirus disease 2019 (COVID-19) pandemic, many uncertified home care aides are unable to obtain training and certification within statutory time frames. Establishing alternate time frames under ESHB 1120 (chapter 203, Laws of 2021) will allow additional time for uncertified home care aides to complete certification requirements while training, testing, and certification capacity issues are being resolved.

These rules continue the initial emergency rules filed on February 15, 2022, under WSR 22-05-079, which established alternate training and certification time frames for individuals working toward certification as a home care aide. In collaboration with the department of social and health services (DSHS), the alternate training and certification time frames provided in the original emergency rule under WAC 246-980-011 have been updated to reflect Washington's current capacity to train and certify home care aides.

Amendments to WAC 246-980-030, 246-980-040, and 246-980-065 create cross-references to new WAC 246-980-011.

Citation of Rules Affected by this Order: New WAC 246-980-011; and amending WAC 246-980-030, 246-980-040, and 246-980-065.

Statutory Authority for Adoption: RCW 18.88B.021, ESHB 1120 (chapter 203, Laws of 2021).

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: This emergency rule is necessary to avoid a critical shortage of home care aides as a result of the COVID-19 pandemic.

During the COVID-19 pandemic, both training and testing were unavailable for several months in 2020 before resuming at limited capacity, creating a large backlog of uncertified home care aides. Thousands of uncertified home care aides have been working under emergency waivers. After the declared emergency and waivers end, however, uncertified aides will not be able to work and will still be unable to readily access the training and testing necessary for certification. Losing these workers would exacerbate the existing home care aide workforce shortage, forcing more medically vulnerable patients to rely on other care options, such as higher-level residential care settings.

Establishing alternate time frames for home care aide certification, developed in collaboration with DSHS under ESHB 1120, will create a path to certification for uncertified home care aides and allow the backlog of workers waiting for testing, training, and certification to be processed.

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 1, Amended 3, 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 1, Amended 3, Repealed 0.

Date Adopted: June 15, 2022.

Kristen Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3558.4

NEW SECTION

WAC 246-980-011 Long-term care workers working or hired during the COVID-19 public health emergency. (1) Unless exempt from certification as described in WAC 246-980-025, a long-term care worker affected by the coronavirus disease 2019 (COVID-19) public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Hired or rehired during the time frame of:	Shall be certified as a home care aide no later than:
August 17, 2019, to September 30, 2020	January 19, 2023
October 1, 2020, to April 30, 2021	April 21, 2023
May 1, 2021, to March 31, 2022	July 19, 2023
April 1, 2022, to September 30, 2022	November 19, 2023
October 1, 2022, to December 31, 2022, or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	December 19, 2023, or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning January 1, 2023, whichever is later	Standard training

(2) "Hired" and "rehired" as used in this section mean the date of hire as defined in WAC 246-980-010. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in subsection (1) of this section.

(3) If a long-term care worker or home care aide is limited-English proficient, the worker may request an additional 60 days to obtain certification under WAC 246-980-065.

(4) Nothing in this section prevents a long-term care worker hired between August 17, 2019, and September 30, 2022, from completing

training or obtaining certification in advance of the deadlines stipulated in subsection (1) of this section.

[]

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

WAC 246-980-030 Working while obtaining certification as a home care aide. (1) A long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(a) Before providing care, the long-term care worker must complete the training required by RCW 74.39A.074 (1)(d)(i)(A) and (B).

(b) The long-term care worker must submit an application for home care aide certification to the department within (~~fourteen~~) 14 calendar days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or online, the date it is accepted by the department.

(2) Except as provided in WAC 246-980-011, a long-term care worker is no longer eligible to provide care without a credential under the following circumstances:

(a) The long-term care worker does not successfully complete all of the training required by RCW 74.39A.074(1) within (~~one hundred twenty~~) 120 calendar days from their date of hire;

(b) The long-term care worker has not obtained their certification within (~~two hundred~~) 200 calendar days from their date of hire, or (~~two hundred sixty~~) 260 calendar days if granted a provisional certificate under RCW 18.88B.041.

(3) This section does not apply to long-term care workers exempt from certification under WAC 246-980-025.

[Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-030, filed 9/28/18, effective 10/29/18. Statutory Authority: Chapters 18.88B and 18.130 RCW, 2012 c 164, and 2013 c 259. WSR 13-19-087, § 246-980-030, filed 9/18/13, effective 10/19/13. Statutory Authority: Chapters 18.88B and 74.39A RCW. WSR 10-15-103, § 246-980-030, filed 7/20/10, effective 1/1/11.]

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, except as provided in WAC 246-980-011, the applicant must:

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

(c) 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.

[Statutory Authority: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085. WSR 21-02-002, § 246-980-040, filed 12/23/20, effective 1/23/21. Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-040, filed 9/28/18, effective 10/29/18. Statutory Authority: Chapters 18.88B and 18.130 RCW, 2012 c 164, and 2013 c 259. WSR 13-19-087, § 246-980-040, filed 9/18/13, effective 10/19/13. Statutory Authority: 2012 c 1 (Initiative 1163) and chapter 18.88B RCW. WSR 12-08-043, § 246-980-040, filed 3/30/12, effective 4/4/12. Statutory Authority: Chapters 18.88B and 74.39A RCW. WSR 10-15-103, § 246-980-040, filed 7/20/10, effective 1/1/11.]

AMENDATORY SECTION (Amending WSR 16-09-004, filed 4/7/16, effective 5/8/16)

WAC 246-980-065 Home care aide provisional certification. (1)

The department may issue a provisional certification to a long-term care worker who is limited-English proficient and submits:

(a) A request for a provisional certification; and

(b) Verification of his or her date of hire as a long-term care worker, as follows:

(i) For individual providers, verification of the applicant's date of hire submitted directly by the department of social and health services; or

(ii) For all other applicants, a form supplied by the department and completed by the employer who hired the applicant as a long-term care worker, verifying the applicant's date of hire.

(2) A provisional certification will be issued only once.

(3) Except as provided in WAC 246-980-011, a provisional certification will take effect ((two hundred)) 200 days from the applicant's date of hire as a long-term care worker, as defined in WAC 246-980-010(2).

(4) Except as provided in WAC 246-980-011, a provisional certification will expire ((two hundred sixty)) 260 days from the applicant's date of hire as a long-term care worker. The applicant must stop working on the ((two hundred sixtieth)) 260th day of employment if the certification has not been granted for any reason.

(5) A request for provisional certification may be denied pursuant to chapter 18.130 RCW, the Uniform Disciplinary Act, or based on RCW 18.88B.080.

(6) For the purposes of this section, "limited-English proficient" means that an individual is limited in his or her ability to read, write, or speak English.

[Statutory Authority: RCW 18.88B.060. WSR 16-09-004, § 246-980-065, filed 4/7/16, effective 5/8/16. Statutory Authority: 2013 c 259 and RCW 18.88B.035. WSR 14-09-002, § 246-980-065, filed 4/3/14, effective 5/4/14.]