

WSR 22-19-027

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed September 13, 2022, 4:11 p.m., effective September 13, 2022, 4:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-980-025 in chapter 246-980 WAC, Home care aides; and adopting new WAC 246-980-012. Due to impacts from the coronavirus disease 2019 (COVID-19) pandemic, long-term care workers experience significant delays when completing training, testing, and certification as a nursing assistant-certified (NAC). Often these delays prevent workers from meeting statutory or regulatory time frames. By establishing alternate, extended time frames for certification, the department of health (department) is enabling these workers to continue participating in the health care workforce as they pursue NAC certification.

The department is creating new WAC 246-980-012, which contains alternate certification time frames for long-term care workers in an approved training program for NAC. These alternate time frames were developed in collaboration with the department of social and health services (DSHS) and the nursing care quality assurance commission.

The amendment to WAC 246-980-025 replaces current certification time frames with a cross-reference to new WAC 246-980-012.

Citation of Rules Affected by this Order: New WAC 246-980-012; and amending WAC 246-980-025.

Statutory Authority for Adoption: RCW 18.88B.041, 18.88B.050, 18.88B.060.

Other Authority: Not applicable.

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: During the COVID-19 pandemic, both training and testing were unavailable for several months in 2020 before resuming at a limited capacity. This created a large backlog of long-term care workers needing training, testing, and credentialing as a home care aide or NAC. While involved agencies and facilities are working to process the backlog as quickly as possible, delays are expected to persist into 2023. So far, workers who are out of compliance with statutory and regulatory guidelines have been able to work under Governor's Proclamations 20-52 and 20-65 (waivers), which waive credentialing requirements. However, these waivers will be rescinded effective October 27, 2022.

After these waivers are rescinded, workers seeking a home care aide credential will be able to continue working under alternate time frames established by the department and DSHS; however, no similar provision currently exists for workers seeking an NAC credential. Without alternate time frames, workers seeking an NAC credential cannot continue providing patient care after October 27, 2022. Losing these workers would place further strain on the health care system.

These emergency rules create alternate time frames for workers seeking an NAC credential. This will allow workers to remain in the workforce, providing patient care, while continuing training, testing, and certification. Retaining these workers will help maintain and ex-

pand the health care workforce, promote access to health care, and preserve the public health, safety, and general welfare.

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 1, 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 1, Repealed 0.

Date Adopted: September 13, 2022.

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

OTS-4035.2

NEW SECTION

WAC 246-980-012 Long-term care workers in an approved training program for certified nursing assistant. (1) A long-term care worker affected by the coronavirus disease 2019 (COVID-19) public health emergency who is in an approved training program for certified nursing assistant under chapter 18.88A RCW must obtain certification as follows:

Hired or rehired during the time frame of:	Shall be certified as a nursing assistant-certified 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 timeline

(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 certified nursing assistant credential when hired during the time frames outlined in subsection (1) of this section.

(3) 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.

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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 successfully pass the entry level training required by RCW 74.39A.074 and meet the requirements of WAC 246-980-040 (1)(b) and (c).

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

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

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

(d) 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) 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) 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) 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, as provided (~~(that the training program is completed within one hundred twenty calendar days of the date of hire and that the nursing assistant-certified credential has been issued within two hundred calendar days of the date of hire)~~) in WAC 246-980-012.

(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.

[Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-025, filed 9/28/18, effective 10/29/18.]