

WSR 24-07-063
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Nursing)
[Filed March 15, 2024, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-074.

Title of Rule and Other Identifying Information: Substance use disorder monitoring program for nursing professions, amending WAC 246-840-750 through 246-840-780 and adding WAC 246-840-790. The Washington state board of nursing (board) proposes amendments and an addition to rules relating to the board's substance use disorder (SUD) monitoring program in response to SHB 1255 (chapter 141, Laws of 2023), Nursing—Substance use disorder monitoring program participation, including application requirements for a stipend.

Hearing Location(s): On May 10, 2024, at 1:15 p.m., at the Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or virtually. Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone. Zoom registration <https://us02web.zoom.us/meeting/register/tZEpd--qqjwiGN2BgNYQ5aDscmprUsuLbfW>.

Date of Intended Adoption: May 10, 2024.

Submit Written Comments to: Bonnie King, P.O. Box 47864, Olympia, WA 98504-7864, email <https://fortress.wa.gov/doh/policyreview/>, by April 29, 2024.

Assistance for Persons with Disabilities: Contact Bonnie King, phone 564-669-9721, TTY 711, email WABONRules@doh.wa.gov, by April 29, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing amendments to current rule sections to establish new definitions, to change "commission" to "board" and "abuse" to "use," and other changes relating to the board's SUD monitoring and treatment program in response to SHB 1255.

The board is also proposing to create a new rule section establishing application requirements for a stipend to offset treatment costs, as directed by SHB 1255. The intent of the stipend program is to encourage initial participation and continuation in the board's approved SUD monitoring program authorized by RCW 18.130.175. The proposed new rule mirrors the statutes eligibility requirements, and further defines the process the board will use to pay the out-of-pocket expenses through the stipend program, clarifies what the board's approved SUD program is as established in existing rules, and establishes eligibility requirements including defining what a "financial need" is.

Reasons Supporting Proposal: Cost can be a deterrent to participation in the board's SUD program for treatment and recovery. SHB 1255, passed in the 2023 legislative session, provided general state funding for a stipend program that could defray up to 80 percent of the out-of-pocket expenses for nurses who establish a financial need. Rule making is necessary to carry out the legislature's directions as reflected in SHB 1255.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, 18.130.175; and SHB 1255 (chapter 141, Laws of 2023), codified in RCW 18.79.440.

Statute Being Implemented: SHB 1255 (chapter 141, Laws of 2023).

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

Name of Proponent: Washington state board of nursing, governmental.

Name of Agency Personnel Responsible for Drafting: Bonnie King, 111 Israel Road S.E., Tumwater, WA 98504, 564-669-9721; Implementation: Grant Hulteen, 111 Israel Road S.E., Tumwater, WA 98504, 360-280-6610; and Enforcement: Catherine Woodard, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4757.

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 Bonnie King, P.O. Box 47864, Olympia, WA 98504-7864, phone 564-669-9721, fax 360-236-4738, TTY 711, email WABONRules@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(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: All of the proposed rule changes apply to individual providers and do not affect small businesses. The following rule proposal, or portions of the proposal are exempt under RCW 34.05.310 (4)(d): WAC 246-840-750, 246-840-760, 246-840-770, and 246-840-780. WAC 246-840-790 is exempt under RCW 34.05.310 (4)(c).

Scope of exemption for rule proposal:

Is fully exempt.

March 15, 2024

Alison Bradywood, DNP, MH/MPH, RN, NEA-BC
Executive Director

Washington State Board of Nursing

OTS-5149.4

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-750 Philosophy governing voluntary substance ((abuse)) use monitoring programs. The ~~((nursing care quality assurance commission (commission)))~~ Washington state board of nursing (board) recognizes the need to establish a means of providing early

recognition and treatment options for licensed practical nurses or registered nurses whose competency may be impaired due to the ~~((abuse))~~ use of drugs or alcohol. The ~~((commission))~~ board intends that such nurses be treated, and their treatment monitored so that they can return to or continue to practice their profession in a manner, that safeguards the public. The Washington health professional services (WHPS) program is the ~~((commission's))~~ board's approved substance ~~((abuse))~~ use monitoring program under RCW 18.130.175. The ~~((commission))~~ board may refer licensed practical nurses or registered nurses to WHPS as either an alternative to or in connection with disciplinary actions under RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-760 Definitions of terms used in WAC 246-840-750 through ~~((246-840-780))~~ 246-840-790. The definitions in this section apply throughout WAC 246-840-750 through ~~((246-840-780))~~ 246-840-790 unless the text clearly requires otherwise.

~~((1))~~ (1) ("Approved treatment facility" is a facility certified by the division of behavioral health and recovery (DBHR) department of social and health services, according to chapters 388-877 through 388-877B WAC that meets the defined standards. Drug and alcohol treatment facilities located out-of-state must have substantially equivalent standards.

~~((2))~~ "Continuing care" means the phase of treatment following acute treatment. Common elements of continuing care include relapse prevention and self-help group participation.

~~((3))~~ (2) "Defray" means the board may pay up to 80 percent of out-of-pocket expenses related to WHPS program participation that includes substance use disorder (SUD) evaluations, SUD treatment and other ancillary services including drug testing, participation, professional peer support groups, and any other expenses deemed appropriate by the board.

(3) "Financial assistance" means board approval to use funds to pay for a participant's out-of-pocket costs associated with participation in the WHPS program.

(4) "Financial need" means a demonstrated need by a WHPS participant when they need help to pay for costs related to participation in the WHPS program.

(5) "Monitoring contract" is a comprehensive, structured agreement between the recovering nurse and WHPS defining the requirements of the nurse's program participation.

~~((4))~~ (6) "Peer support group" is a professionally facilitated support group designed to support recovery and re-entry into practice.

~~((5))~~ (7) "Random drug screens" means laboratory tests to detect the presence of drugs ~~((of abuse))~~ in body fluids and other biologic specimens that are performed at irregular intervals not known in advance by the person to be tested.

~~((6))~~ (8) "Referral contract" is a formal agreement between the ~~((commission))~~ board and the nurse to comply with the requirements of the WHPS program in lieu of discipline.

~~((7))~~ (9) "Self-help groups" means groups or fellowships providing support for people with substance use disorder to support their sobriety and recovery.

~~((8) "Substance abuse" or)~~ (10) "Stipend program" means the board program to defray the out-of-pocket expenses for participants who have applied for and been approved to receive financial assistance in connection with participation in WHPS. The purpose is to assist nurses who would otherwise be unable to participate in the program because of personal financial limitations.

(11) "Stipend program application" means a board form that the participant uses to request stipend assistance that provides information to determine eligibility for stipend funds.

(12) "Substance use disorder" (SUD) means a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the registrant/licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

~~((9))~~ (13) "Washington health professional services (WHPS)" is the approved substance ~~((abuse))~~ use monitoring program as described in RCW 18.130.175 that meets criteria established by the ~~((commission))~~ board. WHPS does not provide evaluation or treatment services.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-770 Approval of substance ~~((abuse))~~ use monitoring programs. The ~~((commission))~~ board uses WHPS as the approved monitoring program.

(1) WHPS will:

(a) Employ staff with the qualifications and knowledge of both substance ~~((abuse))~~ use and the practice of nursing as defined in this chapter to be able to evaluate:

(i) Clinical laboratories;

(ii) Laboratory results;

(iii) Providers of substance ~~((abuse))~~ use treatment, both individuals and facilities;

(iv) Peer support groups;

(v) The nursing work environment; and

(vi) The ability of the nurse to practice with reasonable skill and safety.

(b) Enter into a monitoring contract with the nurse to oversee the nurse's required recovery activities. Exceptions may be made to individual components of the contract as needed.

(c) Determine, on an individual basis, whether a nurse will be prohibited from engaging in the practice of nursing for a period of time and restrictions, if any, on the nurse's access to controlled substances in the workplace.

(d) Maintain case records on participating nurses.

(e) Report to the ~~((commission))~~ board any nurse who fails to comply with the requirements of the monitoring program as defined by the ~~((commission))~~ board.

(f) Provide the ~~((commission))~~ board with an annual statistical report.

(2) The ~~((commission))~~ board approves WHPS's procedures on treatment, monitoring, and limitations on the practice of nursing for those participating in the program.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-780 Conditions for participants entering the approved substance ((abuse)) use monitoring program. (1) Any nurse participating in the substance ((abuse)) use monitoring program must:

(a) Undergo a complete substance use disorder evaluation. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.

(b) Enter into a monitoring contract with WHPS which includes, but is not limited to, the following terms, which require the nurse to:

(i) Undergo any recommended level of treatment ((in an approved treatment facility)) by a board-designated licensed treatment provider, including continuing care;

(ii) Abstain from all mind-altering substances including alcohol and cannabis except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101;

(iii) Cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals;

(iv) Attend peer support group, or self-help group meetings, or both as specified by WHPS;

(v) Complete random or for-cause drug screening as specified by WHPS;

(vi) Comply with specified employment conditions and restrictions as defined by the monitoring contract;

(vii) Agree in writing to allow WHPS to release information to the ((commission)) board if the nurse does not comply with any contract requirements or is unable to practice with reasonable skill and safety;

(viii) Pay the costs of any required evaluations, substance ((abuse)) use treatment, peer support group, random drug screens, and other personal expenses incurred in relation to the monitoring program;

(ix) Sign any requested release of information authorizations.

(2) When referred to WHPS in lieu of discipline, the nurse must enter into a referral contract with the ((commission)) board. The ((commission)) board may take disciplinary action against the nurse's license under RCW 18.130.160 based on any violation by the nurse of the referral contract.

(3) A nurse may voluntarily participate in WHPS in accordance with RCW 18.130.175(2) without first being referred to WHPS by the ((commission)) board.

NEW SECTION

WAC 246-840-790 Substance use disorder monitoring stipend program. (1) Applicants must meet the requirements in RCW 18.79.440 to be eligible for the substance use disorder monitoring stipend program (stipend program). All disbursements of stipend program funds are subject to availability of budgeted funds.

(2) To be eligible for the stipend program, a person must:

(a) Hold an active, inactive, or suspended license issued pursuant to this chapter;

(b) Submit an application on forms provided by the board;

(c) Be actively participating in the board's approved substance use disorder monitoring program (WHPS program) or have completed the WHPS program within six months of submission of an application for the stipend program; and

(d) Have a demonstrated need for financial assistance with the expenses incurred in connection with participation in the WHPS program.

(3) A person is not eligible for the stipend program if they have previously applied for and participated in the stipend program and had benefits paid on their behalf from the stipend program.

(4) The board may defray up to 80 percent of each out-of-pocket expense deemed eligible for defrayment under this section. The board will not pay stipend program funds directly to any person participating in the stipend program. The board will pay out-of-pocket expenses directly to entities providing services to the person participating in the stipend program.

(5) Out-of-pocket expenses eligible for defrayment under this section include the costs of substance use evaluation, treatment, other ancillary services, including drug testing, participation in professional peer support groups, and any other expenses deemed appropriate by the board.

(6) A person participating in the stipend program established in this section shall document and submit their out-of-pocket expenses in a manner specified by the board.

(7) Eligibility:

(a) A person may participate in the stipend program by having the stipend program defray authorized out-of-pocket expenses for one monitoring contract period only, including extensions of the contract monitoring period directed by WHPS.

(b) An applicant who was approved for the stipend program for a monitoring contract period without having benefits paid from the stipend program on their behalf, and later reenters the WHPS program, may be approved to participate in the stipend program.

(c) Stipend program applications are approved for a 12-month period. Persons participating in the stipend program shall submit an application every 12 months to renew their participation in the stipend program.

(d) A person may participate in the stipend program for a maximum of five years from the approval date of the initial stipend program application. Eligibility for the stipend program terminates upon successful completion of or discharge from the WHPS program.

(e) An applicant who previously applied for the stipend program but whose application was denied is eligible to reapply if the applicant's financial circumstances have changed.

(8) To establish financial need for the stipend program, a person shall provide documentary proof that total household income is less than 400 percent of the federal poverty level as determined under 42 U.S.C. 9902(2) and published annually by the U.S. Department of Health and Human Services.

(9) Application forms and documentary proof provided to the board under this section by applicants will be submitted under penalty of perjury and, if shown to be false, could subject the applicant to criminal penalties or other adverse action including, but not limited to, adverse action for moral turpitude, misrepresentation, or fraud.

(10) The stipend program may defray the cost of eligible out-of-pocket expenses incurred by a stipend program participant up to six months prior to application submission.

(11) The board may adopt, publish, and use procedures, forms, guidelines, and other documents necessary for implementation of this rule. Such procedures, forms, guidelines, and documents may be revised, amended, or discontinued as necessary in the sole discretion of the board.