



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: September 01, 2023

TIME: 10:03 AM

WSR 23-18-069

Agency: Department of Social and Health Services, Aging and Long-Term Support Administration, HCS

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 23-11-075 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is proposing to amend the following sections WAC 388-71-0876, When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training?, 388-71-0992, When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?, 388-112A-0081, When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training?, and 388-112A-0613, When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?. The amendments will finalize training, certification, and continuing education pandemic extensions and deadlines, and set a date for repeal of those sections as required by RCW 74.39A.074 and 74.39A.341.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 10, 2023	10:00 AM	Virtual via Teams or Call in	Hearings are held virtually, see the DSHS website https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules for the most up to date information.

Date of intended adoption: Not earlier than October 11, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA 98504
Email: DSHSRulesCoordinator@dshs.wa.gov
Fax: 360-664-6185
Other:
By (date) October 10, 2023, at 5:00 PM

Assistance for persons with disabilities:

Contact DSHS Rules Consultant
Phone: 360-664-6036
Fax: 360-664-6185
TTY: 711 Relay Service
Email: shelley.tencza@dshs.wa.gov
Other:
By (date) September 28, 2023, at 5:00 PM.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposal amends current rules and will finalize training, certification, and continuing education extensions put in place during the COVID-19 public health emergency and will set a date for repeal of those sections as required by statute.

Reasons supporting proposal: RCW 74.39A.074(4)(a) and 74.39A.341(6)(a) stipulate that "If a pandemic, natural disaster, or other declared state of emergency impacts the ability of long-term care workers to complete training as required by this section, the department may adopt rules to allow long-term care workers additional time to complete the training requirements." Additionally, the same statutes require that "Once the department determines a rule adopted under this subsection is no longer necessary, it must repeal the rule under RCW 34.05.353." In 2021, the department added two new sections in chapter 388-71 and 388-112A WAC in response to the backlog of long-term care workers needing training or testing for certification or both caused by the COVID-19 pandemic. The rules allowed additional time for long-term care workers to be certified by requiring them to complete training and continuing education requirements by certain dates to reduce the impact of clients accessing qualified long-term care workers to provide personal care services. Availability of training and certification for long-term care workers continues to require extension to deadlines due to the COVID-19 pandemic. The extensions are critical for ensuring the ability of long-term care workers to access training, certification, and continuing education. The department intends to put current emergency rule deadlines for training, certification, and

continuing education into permanent rule to cover those long-term care workers still affected by training, certification, and continuing education backlogs, and to clarify a final repeal date for all COVID-19 related training rules when they are no longer required as directed by statute.

Statutory authority for adoption: RCW 74.08.090, 74.39A.070, 74.39A.074, and 74.39A.341

Statute being implemented: RCW 74.39A.074 and 74.39A.341

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Department of Social and Health Services

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	David Chappell	PO Box 45600, Lacey WA 98504-5600	360-725-2516
Implementation:	David Chappell	PO Box 45600, Lacey WA 98504-5600	360-725-2516
Enforcement:	David Chappell	PO Box 45600, Lacey WA 98504-5600	360-725-2516

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name: Dave Chappell
Address: PO Box 45600, Olympia WA 98504-5600
Phone: 360-725-2516
Fax:
TTY:
Email: david.chappell@dshs.wa.gov
Other:
 No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: RCW 18.88B.021(3) and 74.39A.341(6)

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)): RCW 74.39A.074(4)(a) and 74.39A.341(6)(a) stipulate that "If a pandemic, natural disaster, or other declared state of emergency impacts the ability of long-term care workers to complete training as required by this section, the department may adopt rules to allow long-term care workers additional time to complete the training requirements." Additionally, the same statutes require that "Once the department determines a rule adopted under this subsection is no longer necessary, it must repeal the rule under RCW [34.05.353](#)."

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:


Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: August 30, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-71-0876 When must long-term care workers who were working or hired during or immediately after the COVID-19 public health emergency complete training, including required specialty training?

(1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	((10/31/2022)) <u>1/31/2023</u>
10/1/2020 to 4/30/2021	((1/31/2023)) <u>4/30/2023</u>
5/1/2021 to 3/31/2022	((4/30/2023)) <u>7/31/2023</u>
4/1/2022 to 9/30/2022	((8/31/2023)) <u>10/31/2023</u>
10/1/2022 - ((12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>6/30/2023</u>	((9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>11/30/2023</u>
((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later)) <u>Beginning 7/1/2023</u>	Standard training <u>requirements-120 days from hire date</u>

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification (~~(as follows:)~~) according to WAC 246-980-011.

(Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	<u>1/19/2023</u>
10/1/2020 to 4/30/2021	<u>4/21/2023</u>
5/1/2021 to 3/31/2022	<u>7/19/2023</u>
4/1/2022 to 9/30/2022	<u>11/19/2023</u>
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	<u>12/19/2023</u> 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 1/1/2023, whichever is later	Standard training))

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. 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 section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between ((8/17/2019)) August 17, 2019, and ((9/30/2022)) September 30, 2022, from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

(6) This section expires on August 1, 2024.

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

WAC 388-71-0992 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?

(1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, home care agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and

that this training is not considered to be repeated training as described in WAC (~~(388-112A-0600(2-))~~) 388-71-0985.

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of ~~((CE))~~ continuing education granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers ~~((shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.))~~ must complete all other continuing education requirements that came due while training waivers were in place in excess of the 12 hours of continuing education granted in section (4) of this section no later than August 31, 2023. Continuing education hours due for renewal cycles occurring between October 28, 2022, and August 31, 2023, must be completed no later than August 31, 2023.

(6) This section expires on January 1, 2024.

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

WAC 388-112A-0081 When must long-term care workers who were working or hired during or immediately after the COVID-19 public health emergency complete training, including required specialty training?

(1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	((10/31/2022)) <u>1/31/2023</u>
10/1/2020 to 4/30/2021	((1/31/2023)) <u>4/30/2023</u>
5/1/2021 to 3/31/2022	((4/30/2023)) <u>7/31/2023</u>
4/1/2022 to 9/30/2022	((8/31/2023)) <u>10/31/2023</u>
10/1/2022 - ((12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>6/30/2023</u>	((9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>11/30/2023</u>

((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later)) <u>Beginning 7/1/2023</u>	Standard training requirements-120 days from hire date
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(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification ((as follows:)) according to WAC 246-980-011.

((Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	1/19/2023
10/1/2020 to 4/30/2021	4/21/2023
5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 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 1/1/2023, whichever is later	Standard training))

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. 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 section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between ((8/17/2019)) August 17, 2019, and ((9/30/2022)) September 30, 2022, from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

(6) This section expires on August 1, 2024.

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

WAC 388-112A-0613 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic? (1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training.

Long-term care workers received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of ~~((CE))~~ continuing education granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers ~~((shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.))~~ must complete all other continuing education requirements that came due while training waivers were in place in excess of the 12 hours of continuing education granted in section (4) of this section no later than August 31, 2023. Continuing education hours due for renewal cycles occurring

between October 28, 2022, and August 31, 2023, must be completed no later than August 31, 2023.

(6) This section expires on January 1, 2024.