



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: December 03, 2020

TIME: 12:47 PM

WSR 21-01-018

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The department is amending WAC 388-71-0975, Who is required to obtain certification as a home care aide, and when?, to clarify how to interpret the long term care worker qualifications and requirements in statute and rule that have specific time periods for compliance when there has been a period of time in which the underlying requirements were suspended and waived in whole or part by emergency proclamation by the Governor.

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: WAC 388-71-0975
- Suspended: None

Statutory authority for adoption: RCW 74.09.520

Other authority:

EMERGENCY RULE

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.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: An adequate number of long term care workers is necessary to provide essential services to the more than 129,000 vulnerable adults receiving services in their own homes and facilities in Washington state. Due to the widespread impacts of the COVID-19 pandemic, long-term care workers have been unable to complete their training and certification requirements due to disruptions and closures of classes and testing sites, and unable to complete their required fingerprint checks due to delays and interruptions in operations by third party fingerprinting vendors. In response, the Governor issued proclamations 20-10 and 20-18 which suspended certain training, testing, and fingerprint requirements.

Currently more than 25,000 long-term care workers have been unable to meet one or more of their requirements and when the Governor's proclamations and their extensions expire, without emergency WACs in place to allow providers adequate time for training, testing and fingerprinting, LTC workers who haven't met their requirements will have to be immediately dismissed leaving some of the state's most vulnerable citizens without access to critical long-term care services.

With the Governor's Safe Start reopening plan, training, testing, and fingerprint locations are beginning to reopen allowing some LTC workers to work on meeting the requirements. However the phased re-opening impacts the capacity of training and testing sites. Many key testing sites are down and sites that are able to test have reduced capacity to 50 percent of previous levels. In-person skills exams are being modified for safety and some local training locations are either closed due to ongoing issues with the pandemic or cannot accommodate social distancing.

All of these issues will delay the ability of the LTC workforce to meet requirements quickly and without emergency rules that allow the LTC workforce adequate time for training, testing, and fingerprinting vulnerable adults run the risk of going without critical long term care services, staffing shortages in the LTC workforce are inevitable, and the state runs the risk of federal disallowances if LTC workers are allowed to work without rules in place.

This emergency rule is intended to be remedial and curative. It is needed to clarify how to interpret the long term care worker qualifications and requirements in statute and rule that have specific time periods for compliance where there has been a period of time where the underlying requirements were suspended and waived in whole or part by emergency proclamation by the Governor.

To be eligible for federal matching funds under the Medicaid program, services must be provided by qualified providers. Under the Washington State Plan, many of the qualifications are found in statute and rule. Without these emergency rules there is a risk that long term care workers who have been unable to comply during the pandemic will suddenly not be qualified to provide Medicaid funded services. This will leave vulnerable adults without the services they are eligible to receive when the Governor's emergency Proclamation 20-10 and 20-18, and all extensions thereto, expire.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted on the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

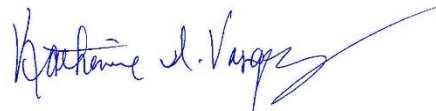
Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

Date Adopted: December 2, 2020

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0975 Who is required to obtain certification as a home care aide, and by when? In order to be authorized to provide department paid in-home services, all long-term care workers (~~(, who do not fall within the exemptions under the department of health WAC 246-980-070,)~~) must obtain home care aide certification (~~((within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 7, 2012)) as provided in chapter 246-980 WAC.~~