

Significant Analysis
For Rules Concerning
Chapter 246-810 WAC
**Agency Affiliated Counselor, Certified Counselor, Certified Adviser,
Hypnotherapist, and Registered Counselor**

Briefly describe the proposed rule.

Second Substitute House Bill (2SHB) 2674 (Chapter 135, Laws of 2008) amended credentialing standards for Registered Counselors. The legislation creates eight new counseling professions, effective July 1, 2009, and abolishes the registered counselor (RC) credential effective July 1, 2010. Sections 2-10 of the bill address three new counseling credentials:

- Agency Affiliated Counselor (AAC)
- Certified Counselor, and (CC)
- Certified Adviser (CA).

The agency affiliated counselor registration is a credential for counselors who are employees of the state of Washington or who are employees of agencies licensed or certified by the state.

The CC or CA credentials are for counselors who are in private practice.

The amended statutes require the Department of Health (department) to develop rules for the eight new counseling professions. Rules for the other five professions are addressed in separate rule packages.

These proposed rules for the AAC, CC, and CA:

- Establish the education, examination, and employment setting requirements to obtain each credential.
- Identify the requirements for client disclosure and assessment in the two private practice counselor professions.
- Clarify the minimum qualifications for individuals who are supervisors or consultants for counselors in the private practice professions.
- Establish a process of agency recognition, in order to employ agency affiliated counselors
- Set continuing education requirements for a CC or CA
- Establish fees for each of the new credentials.
- Abolishment of the registered counselor credential.

Department staff worked closely with constituents and the public to minimize the burden of these rules. 2007 legislation required that the department convene a workgroup to identify and recommend changes to improve public protection and

regulation related to registered counselors. Members included psychiatrists, psychologists, masters degree level counselors (marriage and family counselors, clinical social workers, mental health counselor), registered counselors with and without degrees, from the public and private settings, registered counselor supervisors, patients, and public representatives. Professional associations also attended the workgroup's meetings and provided comments.

Is a Significant Analysis required for this rule?

Yes.

A. Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

Chapter 18.19 RCW establishes the credential requirements to practice counseling as a state employee, in a state approved facilities, in private counseling settings, and for practicing hypnotherapy. The legislature recognizes that there is a considerable variety of disciplines, theories, and techniques employed by counselors. Establishing different counseling credentials provides a framework for counselors to practice their skills, ensures public health and safety, and allows individuals to choose which type of counselor best suits their needs.

The legislative goal was to modify the counselor standards to increase public safety by ensuring that only qualified individuals provide counseling. The legislation created eight new structured counseling credentials to replace the registered counselor credential. Current registered counselors must obtain one of the new mental health counseling credentials by July 1, 2010.

The new credentials for AAC, CC, and CA are consistent with the recommendations of the Governor's 2007 task force on counselor professional standards and credentialing. In addition to increasing the requirements to obtain one of the new counseling credentials, each credential holder will require oversight, supervision, or consultation in their counseling practice.

The hypnotherapist credential in chapter 18.19 RCW was not a focus in the legislation and is not materially changed in these proposed rules.

B. Determine that the rule is needed to achieve these goals and objectives, and analyze alternatives to rulemaking and the consequences of not adopting the rule.

The statute requires the department to adopt rules. There are no alternatives to rulemaking. Standards need to be in rule in order to be enforced. The proposed rules establish the credential and practice standards for the three new credentials that are listed in these proposed rules.

If the rules to set the standards for the professions are not adopted, the department will not be able to administer the program.

C. Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

This rule package consists of 18 new sections, nine amended sections, and eight repealed sections. Ten sections meet the definition of significant. Rules are considered significant if they set criteria necessary for an individual to comply with in order to obtain or retain a credential, or if penalties can be imposed if someone violate the rule.

WAC	Rule Purpose	Action	Significant Y / N	Costs
246-810-010	Adds definitions	Amended	No	N/A
246-810-011	Identifies which activities and individuals are exempt from these rules. (Required in statute.)	New	No	N/A
246-810-012	Identifies the application procedure to obtain the credentials. (Required in statute.)	New	No	Yes – application fee established in WAC 246-810-990
246-810-013	Identifies the credentials a state agency employee must obtain in order to practice counseling or hypnotherapy. (Required in statute.)	New	No	N/A
246-810-015	Identifies the requirements to obtain a registration as an agency-affiliated counselor. (Required in statute.)	New	No	N/A
246-810-016	Identifies the agencies and facilities can employ agency affiliated counselors.	New	Yes	The agency may chose to pay for the licensing cost for their employees.
246-810-017	Describes the procedure for agencies or facilities to be recognized in order to employ agency affiliated counselors. (Required in statute.)	New	No	There may be minimal cost to provide documentation.

246-810-018	Identifies the reporting requirements when an agency-affiliated counselor has an employment change.	New	Yes	The task force workgroup discussed and decided 30-days was a reasonable timeframe.
246-810-020	Identifies the scope and limits of practice of a CC. (word for word from RCW)	New	No	N/A
246-810-021	Identifies the scope and limits of practice of a CA. (word for word from RCW)	New	No	N/A
246-810-022	Identifies the qualifications to become a CC. (Required in statute.)	New	Yes	It was decided from the licensed counselor rules which require more education that six clock hours of course work (1 day = \$350) were reasonable for this level of practitioner.
246-810-023	Identifies the qualifications to become a CA. (Required in statute.)	New	Yes	It was decided from the licensed counselor rules which require more education that six clock hours of course work (1 day = \$350) were reasonable for this level of practitioner.
246-810-024	Identifies the degrees that are considered to be counseling-related to meet the requirements for CC or CA. (Required in statute.)	New	Yes	The taskforce workgroup discussed and determined what were reasonable counseling related degrees and subjects.

246-810-025	Identifies the standards for CC and CA supervision, and CC consultation.	New	Yes	Yes – Requires one to two hours per month. The average cost for supervision per hour is \$90-\$130 (one month would cost \$180-\$260). CC and CAs will have to pay for each meeting with their supervisor/consultant depending on their arrangement.
246-810-026	Identifies the qualifications to serve as an approved CC or CA supervisor, or as an approved CC consultant.	New	Yes	Yes – Requires one to two hours per month. The average cost for supervision per hour is \$90-\$130 (one month would cost \$180-\$260). No loss in revenue to the supervisor because they will receive payment from the CC or CA.
246-810-027	Identifies the hours and time period of continuing education that must be completed by a CC or CA .	New	Yes	N/A
246-810-029	Identifies the courses that are acceptable to meet the continuing education requirement for CC or CA.	New	Yes	Total CE costs may range from \$700-\$3325 depending on the method used per renewal cycle. Law & Ethics on-line course with test ranges \$100-\$150 (6 CE hours). Risk Assessment on-line course with test ranges \$18-\$25 (1 CE hour). College credit course ranges from \$20-\$45 (1 credit).

				College credits can be used for 7-18 credits average cost \$3,325.
246-810-0293	Identifies the local, state, national, international organizations or institutions of higher learning that are recognized to provide continuing education for CC or CA.	New	Yes	N/A
246-810-0295	Identifies what can be credited toward meeting continuing education when a CC or CA prepares and presents a lecture or an educational course	New	Yes	N/A
246-810-0297	Identifies how a CC or CA will document continuing education.	New	Yes	N/A
246-810-030	Identifies the disclosure information that CC or CA must provide to clients. (Required in statute.)	Amended	No	N/A
246-810-031	Identifies the information that must be provided to clients in the disclosure statement. (Required in statute.)	Amended	No	N/A
246-810-032	Failure to provide disclosure information.	Repealed	No	N/A
246-810-035	Identifies the record keeping, retention, and disposal requirements.	Amended	Yes	N/A
246-810-040	Identifies the requirements for the reporting of suspected abuse or neglect of a child, or a vulnerable adult. (Required in statute.)	Amended	No	N/A
246-810-045	Identifies the requirements for fees paid in advance by the client.	Amended	No	N/A
246-810-049	Identifies the sexual misconduct regulations.	Amended	No	N/A
246-810-060 through 066	Identifies the mandatory reporting requirements.	Repealed	No	Mandatory reporting rules for all professions are under chapter 246-16 WAC.
246-810-080	Explains the aids education requirements necessary for credentialing.	Amended	No	N/A

246-810-089	Identifies the transitional dates regarding the registered counselor credential. (Required in statute.)	New	Yes	N/A
246-810-990	Identifies the fees and renewal cycle.	Amended	Yes	N/A

The sections of the proposed rules that are considered significant are discussed below:

WAC 246-810-016 Agencies and facilities that can employ an AAC -

This section is significant because it identifies the facilities and businesses that are always recognized as meeting the definition of “agency”. This recognition permits counselors working at the facility or business to obtain an agency affiliated counselor credential, which is a registration with no education or experience requirements.

Facilities or businesses not automatically recognized as meeting the standard, will need to request recognition from the Secretary.

If a facility or business does not meet the standard to be recognized, individuals working there will not be able to obtain an AAC credential. This could mean that they would have to meet the education and examination standards for another type of counseling credential

WAC 246-810-025 Identifies the supervision and consultation standards for a CC and the supervision requirements for a CA & WAC 246-810-026 Qualifications to serve as a certified counselor and certified adviser supervisor, or as a certified counselor consultant

These sections are significant because they establish the supervision or consultation requirements for a CC. They also establish the supervision requirements for a CA.

The law as passed, requires a CA and a CC, who has not been an RC for five year or longer, to have a supervision agreement with a supervisor who meets the qualifications established by the secretary.

The department developed supervision requirements that specify the frequency of supervision, and define how the supervision may change, as time goes by. The rules specify that there must be a written agreement between the supervisor and the CC or CA, and define what the agreement must include.

The rules require that a CC or a CA and their supervisor must keep a written record regarding the supervision hours and topics discussed.

A CC who has been credentialed for five years or longer, may have a consultation agreement with an approved supervisor. The department developed rules to further define the frequency of consultation, who may act as a consultant, and what must be encompassed in the written agreement between the CC and the consultant.

WAC 246-810-027, WAC 246-810-029, WAC 246-810-0293, WAC 246-810-0295 and WAC 246-810-0297 - These sections are significant because they establish criteria that are necessary for CC or CA to comply with in order to meet the continuing education requirements. In the development of the continuing education requirements, the department evaluated the requirements for the licensed counselor profession and the chemical dependency profession. The proposed rules require a CC or CA to complete 36 credit hours every two years, at least six of the hours, must be in professional law and ethics, as it relates to the counseling profession.

The department further defined the following, when developing the continuing education requirements for a CC or CA:

- The number of continuing education credit hours that must be completed for renewal.
- Acceptable continuing education courses.
- Recognized local, state, national, international organization or institution of higher learning that can provide acceptable continuing education.
- How a counselor can earn continuing education credit for preparing and presenting a lecture or course.
- Describes how continuing education should be documented.

WAC 246-810-035 Record requirements

This section is significant because it sets criteria necessary for a credential holder to comply with, and penalties can be imposed if someone violates the rule.

246-810-089 Identifies the transitional dates regarding the registered counselor credential

This section is significant because it notifies registered counselors of the abolishment date of this credential, and the requirement to obtain another credential or cease practicing.

After carefully considering the above factors, the analysis indicates the probable benefit of this proposed requirement exceeds the probable cost.

The benefit of these rules is to ensure only qualified individuals are credentialed to be an AAC, CC, or CA. The proposed rules will increase public safety and ensure patients receive care from qualified practitioners.

246-810-990 Fees and renewal cycle

The proposed rules establish the fees to obtain and renew the AAC, CC, or CA credentials. RCW 43.70.250 requires that all fees established in rule must cover the costs to administer the program and that the members of the profession must bear the costs. The fee categories for an AAC, CC, or CA are similar to the fees paid for the former registered counselor credential.

It is estimated that:

- 6,954 individuals will apply for the AA credential.
- 2,312 individuals will apply for the CC credential.
- 2,312 individuals will apply for the CA credential.

The cost to administer the current registered counselor program is about \$2.73 million a biennium. The number of credential holders issued in the next few years will affect the actual revenue and expenditure totals. RCW 43.70.250 requires that each profession is self supporting. Continual analysis of the program is necessary to ensure fees keep pace with expenditures, while not allowing revenues to become excessive. The proposed AAC, CC, or CA fees are less than the current fees for the RC.

The costs to regulate the profession affect the fees. These costs include rule-making, credentialing, and disciplinary activities. To determine the fee each provider pays, the department compares the total costs for a profession against the total number of credentialed providers in that profession. Each provider shares equally in the cost to run the program.

The costs to regulate each profession can change substantially from year to year. An increase in the number, or complexity, of disciplinary cases, or a drop in the number credentialed providers, can result in a need to increase fees. A drop in costs or an increase in providers can lead to reduced fees. Programs with fewer credentialed providers and high discipline costs may have higher fees and more fees changes.

Probable Costs of Proposed Rule

WAC	Title	Requirement/ Assumptions	Cost Range
246-810-025	Supervision	2-4 hours \$90-\$130 per hour Monthly for first year	\$180-\$260
246-810-029	Continuing Education	36 hours every two years	Options 1) Varied methods - \$700-\$900 2) College course- up to \$6,650
246-810-990	Fees (depending on profession)	Initial application Annual renewal	\$50-\$117 \$40-\$90

Conclusion

The proposed rules establish credential requirements to ensure counselors are qualified and competent to provide service. The rules provide a framework for counselors to practice their skills and ensure public health and safety. These rules also enable the public to understand the different types of counselors and to choose which type will best suit their needs. Collectively, the benefits of establishing these rules outweigh the cost of the requirements.

D. Determine, after considering alternative versions of the rule, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

The department staff worked closely with constituents and the public to minimize the burden of these rules. For Example:

1. A mailing was sent to all RCs with a Washington address regarding the new legislation.
2. Stakeholder workshops were held in Spokane and Seattle in November, 2008.
3. Draft rule language was distributed throughout the rule writing process for public comment through listserv.

In the course of these and other efforts, the following alternative version of the rule was rejected:

Alternative version #1: This version of the proposed rules did not provide a pathway for other agencies or facilities to be recognized in order to employ agency-affiliated counselors. The extensive stakeholder work that was done revealed, that agencies themselves did not understand what was meant by an agency or facility operated, licensed, or certified by the state.

Since, many state agencies work with many contracts, the proposed language was amended to include WAC 246-810-017 – How can other agencies or facilities be recognized in order to employ agency affiliated counselors.

It is believed that this will provide a clear review process and provide clarity to agencies and facilities who would like to employ agency-affiliated counselors.

E. Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

F. Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The rule does not impose more stringent performance requirements on private entities than on public entities.

G. Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is

justified by an explicit state statute or by substantial evidence that the difference is necessary.

The rule does not differ from any applicable federal regulation or statute.

H. Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

There are no other applicable laws.