

Significant Legislative Rule Analysis

Chapter 246-843 WAC
Concerning Nursing Home Administrators

March 8, 2016

SECTION 1:

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The Board of Nursing Home Administrators (board) is proposing revisions to chapter 246-843WAC concerning rules related to nursing home administrator training, examination, licensure, continuing education, and the definition of sexual misconduct. The current rules have not been updated since early 2000. The proposed changes are necessary to bring the rules up-to-date, meet current industry standards, and clarify ambiguities to comply with chapter 18.52 RCW, RCW 43.70.041, and Executive Order 06-03. The proposed amendments include:

- Training Requirements: Changes include extending reduced training programs to more candidates based on their experience and allowing training to take place in Veterans homes, including military equivalency of returning military personnel who have had military experience or training equivalent to the NHA licensing requirements. More exemptions will be available to candidates based on experience and training. In addition, the board is also proposing adopting a national standard for a training exemption for administrators from other states who do not meet exemption requirements.
- Examination: Changes include defining the passing score.
- Licensure: Changes include adding all requirements to rule as well as adding an up-to-date definition for recognized institution of higher learning to assure applicants attend colleges that meet national standards,
- Continuing Education: Changes include removing the requirement for prior approval and defining the requirements for continuing education. In addition to subjects that relate to the nursing home administrator competencies, the proposal also allows training that relates to suicide prevention and continuing competency. This will allow licensee to know up-front what type of education and training is acceptable.

These updates are necessary to bring the rules up-to-date, meet current industry standards, and clarify ambiguities. The proposed rules are also needed in order to remove barriers for many applicants by reducing and streamlining licensing examination requirements and training program requirements. Finally, the proposal is needed to provide clearer standards of conduct for administrators in order to protect nursing home patients and the general public.

A revision to the current NHA sexual misconduct rules is proposed to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a nursing home administrator. These rules will (1) remove most of the ambiguities of the current definition that could result in a possible challenge; (2) ensure that a clear referral process can occur from the board to the Secretary with cases involving sexual misconduct that do not involve clinical expertise or standard of care issues; and (3) ensure the board's definition of sexual misconduct is consistent with the Secretary's and other professions' definition of sexual misconduct for providers.

Other proposed changes streamline and clarify language to make the rules easier to read and understand for applicants and licensees.

SECTION 2:

Is a Significant Analysis required for this rule?

Yes, as defined in RCW 34.05.328, the proposed rules revise standards for obtaining and maintaining a license, and violation of the rules may result in a penalty or sanction.

The following sections of the chapter do not require Significant Analysis:

#	WAC Section	Section Title	Reason
1	WAC 246-843-040	Duties and Responsibilities.	This rule is being repealed because it only repeats information already in statute.
2.	WAC 246-843-073	Examination Score.	This rule is being repealed because the information is moved to another section.
3.	WAC 246-843-150	Continuing education requirements for renewal of active license.	This rule is being repealed because the information is moved to another section.
4.	WAC 246-843-180	Expired License	Rule only clarifies language without changing its effect per RCW 34.05.328(5)(b)(iv)
5.	WAC 246-843-205	Standards of conduct	Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect per RCW 34.05.328(5)(b)(iv)
6.	WAC 246-843-231	Temporary practice permits	Rules that only correct typographical errors, make address or name changes, or

			clarify language of a rule without changing its effect per RCW 34.05.328(5)(b)(iv)
7.	WAC 246-843-270	Definitions related to sexual misconduct	Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect per RCW 34.05.328(5)(b)(iv)
8.	WAC 246-843-330	Inactive license	Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect per RCW 34.05.328(5)(b)(iv)

SECTION 3:

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

The proposal implements the general goals and specific objectives of the authorizing statute, chapter 18.52 RCW. This statute states the purpose of the Board of Nursing Home Administrators (board) is to establish and provide for the enforcement of standards for the licensing of nursing home administrators. The chapter also provides that the board is to protect the public by ensuring that nursing home administrators in Washington state are properly qualified for licensure and provide quality patient care in nursing homes. The quality of patient care in nursing homes is directly related to the competence of the nursing home administrators. The chapter intent is that licensed nursing home administrators continually maintain the suitable character required, the capacity to consider the available resources and personnel of the facility and come to reasonable decisions implementing patient care.

RCW 18.52.071 requires that licensees applying for a nursing home administrator's license successfully complete the requirements for a baccalaureate degree from a recognized institution of higher learning and any federal requirements, a practical experience requirement as determined by the board, and an examination administered or approved by the

board which is designed to test the candidate's competence to administer a nursing home. The rules address training, examination and licensure requirements. They are being updated to assure that the rules are up-to-date and meet current industry standards and clarify ambiguities.

RCW 18.52.061 (5) also gives the board authority to adopt rules implementing a continuing competency program. The board is updating the continuing education rules to clarify the type of education that qualifies and to update the rules to specifically include credit for suicide prevention and cultural competency training. The revision also eliminates a requirement for prior approval.

RCW 18.52.130 recognizes out of state licensees. The board has updated the endorsement rules to eliminate the ability to use ACHCA certification in lieu of college degree transcript because RCW 18.52.071 requires the baccalaureate degree.

RCW 18.52.066 places nursing home administrators under the Uniform Disciplinary Act, which gives the board authority to investigate complaints of unprofessional conduct, hold hearings and take disciplinary action. The board is updating sexual misconduct rules to include in the definition that forcible nonconsensual acts are within the definition of sexual misconduct by a nursing home administrator. Other revisions are also proposed to this section to clarify ambiguous language to specify that administrators are in charge of facilities and do not provide direct patient care in order to better protect nursing home patients.

SECTION 4:

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The board determined that rule amendments are needed to achieve the general goals and specific objectives of authorizing statutes because the current rules are significantly out-of-date. Current licensure rules for training, examination, continuing education, and reactivation have not been updated since early 2000. A rules moratorium was in effect from November 17, 2010 through December 31, 2012 due to executive orders 10-06 and 11-03. During that time-frame, the board found some rules needed to be changed but were unable to do so. They began reviewing those issues again in 2012 and 2013. Rules revisions that were considered during the moratorium and again reviewed in 2015-16 include the following:

- Updating the definition of “recognized institution of higher learning.” The board found, during this time-frame, that the current definition incorrectly indicates that the American Council on Education accredits educational institutions when it, in fact, accredits the organizations that accredit the schools. It was also noticed that the current definition limited the amount of foreign institutions. The proposal corrects this.

- The board found that the current rules did not indicate that training programs could take place in a Veterans' Home because they are not licensed by the Department of Social and Health Services. The proposal offers this opportunity to returning military personnel.
- Many bills were passed to increase the ability for veterans to access licensure. However, the board's training rules allowing for a reduced program or exemption to training did not state that they allow for military experience equal to the civilian classifications and time limits. The proposed rules allow for his opportunity for military or returning military personnel.
- A national standard for an exemption to training based on practice in other states was adopted by the National Boards of Long Term Care Administrators Board. The board's current exemption is more restrictive than the national standard, and the proposal corrects this.
- The board considered eliminating the requirement for preapproval for continuing education. The proposal eliminates this requirement.
- The board agreed that cultural competency was acceptable for continuing education credit. Proposed rules allow for this as a continuing education credit.
- The board found that there was an incorrect reference to another rule in WAC 246-840-330. The proposal corrects this.

In addition, Substitute Senate Bill 5679, effective 9/28/2013 and codified as chapter 43.70 RCW, requires the Department of Health to establish and perform a formal review process of its existing rules every five years. As a result, the board reviewed all rules and determined that more changes would be necessary to bring them up-to-date.

There are no alternatives to rulemaking in order to affect these amendments. Rules must be adopted to make these new requirements enforceable.

SECTION 5:

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

During the rulemaking process, the board gathered input from stakeholders interested in the proposed rule. In addition, the board worked in consultation with their Assistant Attorney General advisor and the Washington Podiatric Medical Association to propose amendments to the current CME requirements. Proposed cost/benefits of the amendments are analyzed below.

WAC 246-843-010 General definitions (Revised)

Rule Overview: This proposed rule provides definitions for language used within the nursing home administrator rules. Proposed changes made include listing the definitions in

alphabetical order and minor language changes. The definition for “recognized institution of higher learning” is changed to reflect the agencies that accredit the institutions. The definition currently defines this as graduation from foreign institutions that are approved by the Higher Education Accreditation (CHEA) or the United State Department of Education (USDOE.) These organizations do not accredit the schools. They approve the agencies that accredit the schools. In addition to correcting this language, the board chose to add language to allow licensure for candidates who graduate from other foreign institutions if their program is deemed to meet CHEA or USDOE requirements by accredited organizations.

Rule Cost/Benefit Analysis: The only costs associated with this proposed rule are for candidates who graduated from a foreign institution that is not listed as approved by CHEA or USDOE. Those graduates may obtain an evaluation from an organization that is a current member of the National Association of Credential Evaluation Services (NACES) or the Association of International Credential Evaluators, Inc. (AICE) to show that their program meets the same standards as CHEA or USDOE. Costs for evaluations currently range from \$150 to \$300. The benefit of the proposed rule is that it allows the candidate to qualify for licensure where they would not have qualified without the evaluation. This public health benefit offsets the cost.

WAC 246-843-070 Examination. (Revised)

Rule Overview: The current rule defines the licensure examination approved by the board. It is amended to remove a specified number of times per year that the exam must take place because the examination is now offered at a testing center and can take place any time that works for both the testing center and candidate. The change adds the specific passing score so that the candidate is aware of this information upfront. In addition, WAC 246-843-073 was merged with this rule because both address the examination.

Rule Cost/Benefit Analysis: There are no additional costs to comply with this proposal because the approved examination has not been changed. However, the cost of the NAB examination, which is \$375, does remain as a cost associated with the rule. All states require the NAB examination for nursing home administrator licensure. Use of this examination allows licensees to endorse easier to another state. This benefit offsets the cost of the examination.

In addition, the procedures used by the NAB examination committee to prepare the tests are consistent with the technical guidelines recommended by the American Educational Research Association, the American Psychological Association, the National Council on Measurement in Education and the Guidelines for the Development, Use and Evaluation of Licensure and Certification Programs. Test specifications are based on the results of a job analysis study which is updated every five years. NAB is the only national agency to offer a licensure examination for nursing home administrators. The only other option would be for the Department of Health to develop and administer an examination. If the Department were to develop a legally defensible licensure examination, it is likely that there would be a greater cost passed on to the applicant than the cost for the NAB examination.

WAC 246-843-071 Application. (Revised)

Rule Overview: Original language stated that an applicant needed to pay fees and complete the application in every respect prior to the examination date. While other rules define the requirement for a degree, an administrator-in-training program and the examination, this rule brings the requirements all together in one place to clearly define all requirements for application.

Rule Cost/Benefit Analysis: There are no additional costs to comply with this proposal as this fee is already included in the nursing home administrator fee schedule under WAC 246-843-990. The benefit of this rule is that it clearly defines, in one place, what is needed for application for a nursing home administrator license.

WAC 246-843-090 Administrator-in-training program. (Revised)

Rule Overview: This section describes what is required for training to become a nursing home administrator. The training must be in a Washington state licensed nursing home with the administrator of the facility as the preceptor. A change allows the AIT program to also take place in a state veterans home established under chapter 72.36 RCW.

Ninety percent of the training is spent in rotations through each department, while the remaining ten percent will include a written project assignment, planned reading and writing assignments, and other planned learning experiences. The preceptor and administrator-in-training must complete quarterly reports for the board. These components of training were already described in rule. The board added a requirement for a site visit by a board member to take place before the program is complete.

The board also changed language regarding requests for changes in the training program. The new language states that only two changes will be allowed.

Old language states that no program shall be approved if the facility has a capacity of fewer than fifty beds but that exceptions may be granted by the board in unusual circumstances. The new language specifies that the board will consider a program in a facility with less than 50 beds only if there is a plan to broaden the AIT experience with an equal percentage of experience in a larger facility.

Rule Cost/Benefit Analysis: The administrator-in-training program does not cost the applicant and most applicants do not get paid to participate in the program. This training gives the applicant knowledge needed to perform as an administrator and to pass the national examination. As with college training programs, it makes it easier for the applicant to get a better job. Allowing training to take place in state veterans homes allows for more opportunities.

WAC 246-843-091 Length of AIT program. (New Section)

Rule Overview: This section describes the length of the program and reductions allowed. As mentioned above, the training does not have a cost but the applicant is unlikely to get paid for attending the program.

Changes in this section include additional ways to qualify for a reduced hour program. Applicants without previous relevant experience are required to take a 1,500 hour program, which takes approximately nine months to complete. Applicants with specific relevant experience can be approved to take a 1,000 hour or 500 hour program instead. The 1,000 hour program normally takes six months to complete while the 500 hour program takes three months to complete. The board has added both experience and education that qualify towards a reduced hour program. In addition, language clarifies that military training equivalent to the civilian classifications and time-limits can be considered for a reduced hour program.

Rules Cost/Benefit Analysis: Less time spent in training may result in a cost savings for candidates as this allows the applicant to become licensed and begin working as a nursing home administrator sooner than in the current rule.

WAC 246-843-093 Exemption. (Revised)

Rule Overview: This section describes the qualifications to be exempt from the Administrator-in-Training program. Applicants who meet the experience specified in this rule do not need to complete an Administrator-in-Training program. The new language adds an exemption for experience that was not included previously. It also adds an exemption for veterans who have military experience equal to the civilian classifications and time limits listed.

In addition, the new language is changed to match language developed by the National Boards of Long Term Care Administrators (NAB) for applicants who have worked as an administrator in another state and who do not qualify for endorsement because they do not have a license in a state with requirements substantially equivalent to Washington. The current language allows an exemption for individuals who have worked as a licensed nursing home administrator for a minimum of five years in the past ten years. New language allows the exemption for individuals who have worked as an administrator for two of the past five years.

Rule Cost/Benefit Analysis: There are no costs to comply with this rule. The benefit is that applicants for nursing home administrator licensure that have specific prior qualifications are exempt from the administrator-in-training program. The addition to the experience portion allows a cost savings for those who meet this exemption because they will not have to spend time training that could have been spent working in a paid position.

An additional benefit is for out-of-state administrators applying for licensure. They are able to qualify for the exemption after two years rather than five years. In addition, this is a standard adopted by many states. As such, it is a requirement expected by many out-of-state applicants.

WAC 246-843-095 Preceptors for administrator-in-training programs. (Revised)

Rule Overview: This section describes the qualifications of the preceptor. Original language includes employment as a nursing home administrator for at least three years, that

the preceptor is the full time nursing home administrator in the facility where the training program takes place, that the preceptor have an unrestricted license and that the preceptor participate in and successfully complete a preceptor workshop or other training deemed necessary by the board. The proposal eliminates the requirement for preceptor training if deemed necessary.

The proposal also changes the language that permitted a preceptor to have two AITs at the same time. The proposed language requires the preceptor to receive prior approval from the board in order to supervise more than one AIT. The board recognizes that one AIT candidate is an ideal situation to ensure they gain the skills needed for minimum competency as an administrator. However, there could be times when it would be more time efficient to have two AITs concurrent in a program or an AIT may transition into the preceptor's facility toward the end of another AIT candidate's completion of the program. The proposed language does not prevent the preceptor from having two AITs at the same time but it does allow the board to review the situation to ensure that AITs will be getting the experience they need.

Rules Cost/Benefit Analysis: No costs are incurred by the applicant or the proposed preceptor. The changes delete a requirement for potential training by the preceptor. Therefore, any costs related to preceptor training are eliminated.

WAC 246-843-130 Continuing education. (Revised)

Rule Overview: This section requires 36 hours of continuing education every two years and explains the type of education that can be used for this requirement. There are no changes to the number of hours. However, the requirements for the number of hours have been moved to this rule from WAC 246-843-150.

Requirements explaining which subjects are acceptable were previously in policy. The proposed language requires the education fit within the nursing home administrator domains of practice. The domains of practice are used as sections of the current examination. In addition to the domains of practice, the new language allows continuing education regarding suicide prevention and cultural competency.

The proposal also requires the continuing education provider to offer a certificate of completion as this allows the Department to verify that an administrator has met the continuing education requirement. The number of hours an administrator can take through on-line sources is not limited.

This proposed rule also requires that a nursing home administrator complete a six hour training that covers the requirements of chapter 18.52 RCW within six months of licensure. This requirement was adopted previously when the board removed the requirement for a state examination.

Rules Cost/Benefit Analysis: The legislature has found that the quality of patient care in nursing home is directly related to the competence of the nursing home administrators. Through continuing education, administrators are able to learn new standards and find out about changes that can increase their competency. The proposed rules offer an expanded list

of continuing education options to administrators. No new costs have been added as the number of hours required remains the same.

WAC 246-843-230 Endorsement. (Revised)

Rules Overview: This rule explains how to endorse your license from another state to Washington. This allows applicants to obtain a nursing home administrator license based on a license they hold in another state, if that state's qualification for licensure is equivalent to qualifications held in Washington state.

Changes include adding one of the rules where the requirements can be found, changing "college or university" to "recognized institution of higher learning" as it is defined in rule and other minor word changes.

Another change in the proposal is to eliminate a portion of the rule which allows applicants who are certified by the American College of Health Care Administrators (ACHCA) to submit verification of ACHCA certification in lieu of college degree transcripts. Because this requirement for a college degree is in law, RCW 18.52.071(1), the board must require the college education.

Rules Cost/Benefit Analysis: Most changes to this rule are minimal and do not incur new costs. The most substantial change is that an ACHCA certification will not be acceptable in lieu of a college degree. The requirement for a college degree is already in law. This is not a new cost.

WAC 246-843-280 Sexual misconduct (Revised)

Rules Overview: Sexual misconduct rules inform nursing home administrators what acts are considered to be sexual misconduct. Under RCW 18.130.180(24), sexual contact with a client or patient is unprofessional conduct.

Sexual misconduct rules are proposed to be revised to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a nursing home administrator.

Other changes are proposed under WAC 246-848-280(1)(b), (f), (g), (h), and (j) to acknowledge that there is no reason a nursing home administrator would be examining or treating a patient. A nursing home administrator's job duties do not include examination or treatment of a patient. Section (8)(a) is proposed to be deleted to in order to clarify that a nursing home administrator is in charge of the facility and does not provide specific patient care.

Rules Cost/Benefit Analysis: These rules will (1) remove most of the ambiguities of the definition that could result in a possible challenge; (2) ensure that a clear referral process can occur from the board to the Secretary with cases involving sexual misconduct that do not involve clinical expertise or standard of care issues; and (3) ensure the board's definition of sexual misconduct is consistent with other board and commission definitions of sexual

misconduct, as well as the Secretary’s definition of sexual misconduct. There is no cost to administrators to implement these rules.

SECTION 6:

Identify alternative versions of the rule that were considered, and explain how the department determined 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 state previously.

Previous drafts of the rules that were considered as alternative versions included the following:

- To leave in WAC 246-843-040 in the set of rules and to add more to this rule. It was determined that this rule was repetitive and should be removed.
- Restricting Administrator-in-Training programs from taking place in facilities that have Medicare sanction for two years after the sanction is issued. The board determined that an administrator in training could learn a lot from an administrator who is working to bring out of sanctions and decided not to include this restriction.
- Allowing military experience and training to count toward reduced Administrator-in-Training programs only if the veteran has had an honorable discharge. The board determined that the training and experience could be valid even if there wasn’t an honorable discharge. They will consider each veteran’s experience on a case-by-case basis.
- The first draft included language that an administrator who wanted to be a preceptor “may” take a preceptor program approved by the board but did not require it. This would allow the board to review and approve preceptor training program. The board decided against this since they would not be requiring preceptors to take the training.

SECTION 7:

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

SECTION 8:

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 proposed rule does not impose more stringent performance requirements on private entities than on public entities. All Washington state licensed nursing home administrators are required to meet the new requirements, regardless of which nursing home they work for.

SECTION 9:

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 proposed rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

SECTION 10:

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.

The proposed rule is coordinated to the maximum extent practicable with other applicable laws.