

Significant Legislative Rule Analysis

Chapter 246-341 WAC a Rule Concerning Behavioral Health Agency Administrative Requirements

January 15, 2020

SECTION 1:

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

In 2018, the legislature transferred authority and responsibility for behavioral health agency licensing and certification from the Department of Social and Health Services (DSHS) to the Department of Health (department) pursuant to Section 10002 of 2ESHB 1388 (Chapter 201, Laws of 2018). Subsequently, the department transferred DSHS' chapter of rules to department authority in chapter 246-341 WAC.

This summer was the department's two-year anniversary of assuming the authority for regulating behavioral health agencies. In this time, the department has become aware of a number of policy issues that must be addressed to bring these regulations up to date and in alignment with the department's mission. The department has published several guidance and interpretive statements to temporarily address several of the policy issues. The department examined and discussed the rules with interested parties and partners to incorporate the statements into permanent rules, consider what changes might be made to the licensure and certification of services in behavioral health facilities, and to consider incorporating and implementing other recommendations and legislative directives.

Additionally, there has been legislative focus on behavioral health issues in the state of Washington in the past few years that has changed terminology and policy. To eliminate confusion, these updates must be reflected throughout the rule chapter.

The department conducted an informal but comprehensive survey in 2019 that invited interested partners and interested parties to submit their comments, recommendations, and suggestions on this chapter of rules. The department had a high level of engagement and response with the survey (894 responses). After processing these results, department staff have been invited to present the results of the survey to several groups and have conducted and recorded informational webinars that have been made available on our website. Additionally, the department held an interactive webinar that allowed all interested parties and partners to participate in the development of a rulemaking work plan based on the survey results. Participants identified the desired scope of this rulemaking project and the preferred approach to addressing the various topics within the chapter, taking into account the pressures and challenges that have arisen from the current coronavirus 2019 (COVID-19) pandemic response.

The department held weekly rules workshop webinars over four months in the summer and autumn of 2020. The workshops were open to all partners and interested parties and every section in this WAC chapter was researched and scrutinized. Over 400 participants registered for the workshop series with 60-100 attendees participating each individual session. The department is very grateful for the generous sacrifice of time, hard work, expertise and experience, flexibility, and compassion that was demonstrated by our partners in the development of these proposed rules. This draft represents our collective best efforts to improve these regulations and take the next step forward in improving the delivery of behavioral health services in the state of Washington.

SECTION 2:

Is a Significant Analysis required for this rule?

Yes. This rule change meets the definition of Significant Legislative Rule and much of the rule does not qualify for an exemption.

SECTION 3:

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

RCW 71.24.037 grants the department licensing, rulemaking, and enforcement authority for behavioral health agencies and directs the department to establish state minimum standards for behavioral health services. Specifically:

“The secretary shall establish by rule minimum standards for licensed or certified behavioral health agencies that must, at a minimum, establish: (a) Qualifications for staff providing services directly to persons with mental disorders, substance use disorders, or both; (b) the intended result of each service; and (c) the rights and responsibilities of persons receiving behavioral health services pursuant to this chapter and chapter 71.05 RCW. The secretary shall provide for deeming of licensed or certified behavioral health agencies as meeting state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department.

There has been legislative focus on behavioral health issues in the state of Washington in the past few years that has changed terminology and policy. Chapter 246-341 WAC implements three main statutes that have been significantly amended since the department assumed responsibility for these rules:

- Chapter 71.24 RCW governs community behavioral health services and agencies and was significantly amended by E2SSB 5432 (chapter 325, laws of 2019).
- Chapter 71.05 RCW governs involuntary behavioral health services for adults and was significantly amended by 2E2SSB 5720 (chapter 302, laws of 2020) and also changed by several other bills including 2SHB 1907 (chapter 446, laws of 2019).
- Chapter 71.34 RCW governs behavioral health services for minors and was significantly amended by several recent bills, including E2SHB 1874 (chapter 381, laws of 2018) and SHB 2883 (chapter 185, laws of 2020).

This proposal addresses new RCW 18.205.160 (from ESHB 1768, chapter 444, laws of 2019), which explicitly requires the department to amend WAC 246-341-0515 to reflect the new Co-occurring Disorder Specialist enhancement credential, as well as reflecting the new terminology for Substance Use Disorder Professional.

These proposed rule changes also incorporate the Special Terms and Conditions of the 1115 Medicaid Transformation Waiver signed by the Health Care Authority and the federal Centers for Medicare and Medicaid regarding medication assisted treatment and care coordination in agencies that provide residential substance use disorder services. Some of the terms of the 1115 Waiver are reflected in the statutory changes made by SSB 5380 (chapter 314, laws of 2019).

The department has worked with partners and interested parties to specifically examine the rules and identify where changes could be made to align with RCW 71.24.870 (from E2SHB 1819, chapter 207 laws of 2017) and RCW 71. 24.872 (from E2SSB 5432, chapter 325 laws of 2019) which direct the department to reduce duplicative, inefficient, and burdensome regulations for behavioral health agencies where possible.

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.

Understanding that the current public health emergency and response to the COVID-19 pandemic impacts the capacity or interest of our partners in fully participating in this long-planned rule change, department staff conducted a one question survey in April 2020. We asked our interested parties if they would prefer to continue as planned, slow down and extend the planned project, or pause the project altogether. We had nearly 150 responses, the majority of which recommended we move forward on the project, but slow it down to accommodate priorities related to the pandemic. This has informed the pace of this project and methods of engagement.

This rule proposal eliminates multiple rule sections and has consolidated and simplified others; the department calculates that it is reducing the existing WAC chapter by over 40 percent. Where possible, the department removed or reduced rules that unnecessarily duplicated statutory language. In several instances, the department (in coordination with partners) reduced or eliminated rules that more appropriately fall under the purview of behavioral health professional licensing law and rule, or Health Care Authority contracts and rules.

If the department does not change the rules to align with the myriad of statutory changes and to implement other requested changes, there would be a great deal of confusion on how to comply with and how to enforce compliance with legislative and federal mandates. Additionally, the department would be explicitly out of compliance with legislative direction in some circumstances, such as:

- The amendment of WAC 246-341-0515 to include Co-Occurring Disorder Specialists according to RCW 18.205.160;
- The reduction of reduce duplicative, inefficient, and burdensome regulations for behavioral health agencies where possible according to RCW 71.24.870 and 71.24.872; and
- The implementation of provisions for Medication Assisted Treatment according to the RCW 71.24.585, which, if rules were not adopted, might additionally put the state in jeopardy of not receiving federal funding according to the terms of the 1115 Medicaid Transformation Waiver.

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.

The department worked with workshop participants to determine which of the proposed rule changes might represent a new cost or cost savings and distributed a survey to all participants, partners, and interested parties asking for their cost estimates. The Health Care Authority also distributed this cost estimate survey to their Behavioral Health interested parties. Over 175 people responded to the survey. Participants estimated that implementing the proposed rule changes would mean overall cost savings and the department received no estimated new costs from behavioral health agencies for the final proposed rule. Many areas of the proposed rule were estimated to be cost neutral. Below highlights the areas where survey participants indicated estimated economic impact and benefits of the proposed rule.

General undefined costs

Though no estimates of new costs were provided by survey participants, a few survey participants noted some undefined costs in a couple of areas:

- One participant noted that their agency would experience undefined increased cost because the various proposed changes to WAC 246-341-0300 are not clear about whether there is a requirement for a background check for the administrator position.
- Related to the incorporation of the Tribal Deeming Policy Statement, one participant noted undefined increased costs relating to the department unfairly lowering and/or removing reviews and requirements just for tribes and not all behavioral health agencies.
- It was noted that in general, updating the Policies and Procedures of an agency will amount to a cost for the agency. However, no specific costs were quantified by participants.
- The department initially proposed removing the certification for Applied Behavioral Analysis (ABA). One participant opposed this proposed policy change noting estimated long term costs of \$13,600 saying, “*Our agency greatly opposes the loss of the ABA*”

certification for the LBHA. This credential provides a proactive and preventative inspection system leaving recipients of ABA with only a complaint based inspection system (i.e., the only oversight will come when a complaint is made on an individual provider). We believe this is not in the best interest of consumers nor agencies.” The department received additional information from ABA partners concerned that removing this certification at this time would not be beneficial and so the department is no longer proposing removing the certification at this time.

- Related to the proposed amendment to WAC 246-341-1050 for Opioid Treatment Program medication management, a participant noted no present cost, but the possibility of a future cost: “At this time, we have received kits on a grant. Future costs may increase to provide reversal medication”

Savings and Benefits

The total of all savings in each category estimated by survey participants for this proposed rule change is up to \$75,000 in short term savings and up to \$589,620 in long term savings. The following particular were noted:

A. Mental Health Professional designation.

In the proposed change in WAC 246-341-0200 the department clarified the definition of “mental health professional (MHP), to allow the professions already licensed by the department listed under (a) and (b) to automatically be considered an MHP without the need of additional designation by the department or agency.

	Estimated savings	Explanation of estimate
Long term savings	\$4,200 – 60,000	Cost savings for each license over 10 years
Short term savings	[no specifics reported]	[no specifics reported]

Agencies made the following statements:

- *Administrative time is saved for credentialing staff as well as clinical staff involved in completing and processing applications*
- *This will offer significant reduction in administrative process and process compliance activities with cost savings difficult to determine*
- *May have a small long term cost savings with FTEs since staff starting will be MHP at time of hire instead of 2 years post graduation*
- *Less work on the part of HR staff*
- *Saved time.*

B. Broadening who can sign an application.

A proposed change in WAC 246-341-0300, the department broadened who signs application from “administrator” to “designated official” to match other department WAC. Agencies noted the following general cost savings:

- *Reduction in staff time dedicated to this effort*

- *When looking at a designated title it is a waste of time, money, and energy.*

C. Multiple buildings on a single campus under one BHA license.

The proposed change to WAC 246-341-0300 added the ability for multiple buildings on a single campus to be licensed under the same BHA license which aligns with Residential Treatment Facility (RTF) rules. Participants estimated:

	Estimated savings	Explanation of estimate
Long term savings	\$15,000 -45,000	Cost savings for each license over 10 years
Short term savings	\$1,500 -4,500	Cost savings on license for one year

Agencies made the following general statements:

- *This would be very beneficial for our many buildings*
- *We don't have multiple buildings on a campus.*
- *Decrease in annual license fees. Decrease in complexity of administrative oversight and compliance activities. Potentially some impact to 25% of our currently licensed locations/sites.*
- *Reduces licensure cost for the different buildings we provide services from*
- *We have three buildings on the same campus. This would reduce our admin work and hopefully the cost of additional branch site fees.*

D. Removed administrator background check for change of location if administrator stays the same.

A proposed change in WAC 246-341-0300, the department removed the administrator background check requirement for a change of location if administrator remains the same. Agencies noted the following general cost savings:

- *Cost savings from "reduction in staff time dedicated to this effort*
- *Decreased cost, but not significant in terms of dollars. Less time consuming*
- *There is administrative burden and it is senseless to do a repeated background check on an administrator without due cause*

E. Removed requirement for background checks for owner and aligned paperwork requirements for background check for administrator with other DOH facility WAC

In the proposed change in WAC 246-341-0300 the department removed requirements for background check for owner and aligned the paperwork requirement for background check for administrator with other DOH facility WAC.

	Estimated savings	Explanation of estimate
Long term savings	\$20	Saves about \$20 annually
Short term savings	[no specifics reported]	[no specifics reported]

Agencies made the following statements:

- *There is administrative burden and it is senseless to do a repeated background check on an administrator without due cause.*
- *I pay for 25 background checks per year.*

F. Removing requirement for name and credentials of each staff member when adding a new service.

In a proposed change in WAC 246-341-0300, the department removed the requirement for name and credentials of each staff member when adding a new service since this is not required for other applications.

	Estimated savings	Explanation of estimate
Long term savings	\$200 - \$10,000	Less admin time in completion of applications
Short term savings	\$200	Savings in staff time

One participant noted minimal cost savings in that “*service additions are an infrequent activity*”, while other participants noted:

- *A time savings but hard to estimate costs”* (three participants said this)
- *Reduction in staff time dedicated to this effort*
- *Administrative cost savings*

G. Reducing requirement for full license application for a change in location

In a proposed change in WAC 246-341-0300, the department reduced the requirement for full license application for a change in location to instead be an abbreviated application which does not require submission of administrator background check or policies and procedures if there are no changes.

	Estimated savings	Explanation of estimate
Long term savings	\$200 - \$10,000	Less staff time in completion of applications
Short term savings	[none reported]	[none reported]

One participant noted minimal cost savings in that “this is an infrequent activity so impact is minimal and buried in administrative costs”, while other participants noted that:

- *Administrative time would be reduced by about 75%. While this does not occur frequently, the cost saving per application would be reduced accordingly*
- *This would relieve an administrative burden as opposed to a fiscal burden.*
- *This would represent about \$1,000 in long term staff time savings*

H. Deeming

In the proposed change in WAC 246-341-0310, the department clarified and updated deeming process for branch sites, reducing requirements, including reducing requirements for department separate review in certain circumstances listed in (3).

	Estimated savings	Explanation of estimate
Long term savings	[none reported]	[none reported]
Short term savings	\$5,000	Deeming should be simple and easy; less admin time saves money

A participant noted:

- *It makes sense to reduce administrative burden*

I. Deeming – incorporating policy statement about tribal agency deeming

In the proposed change in WAC 246-341-0310, the department incorporated Policy Statement WSR 19-20-064 that clarifies that the department will not conduct an initial review as part of the deeming process for tribal behavioral health agencies. A participant noted the following general savings:

- *Reduction in staff time dedicated to this effort.*

J. Onsite reviews and plans of correction

In the proposed change in WAC 246-341-0320, the department clarified that onsite reviews for branch sites will take place at the main site location and that only personnel records of employees hired since the previous review will be looked at, only a sample of patient charts are required, and only policies and procedures unique to the branch site will be reviewed.

	Estimated savings	Explanation of estimate
Long term savings	\$1,500 - \$5,000	Staff time savings
Short term savings	\$5,000	On sites are time consuming and expensive

Agencies made the following statements indicating cost savings:

- *I don't have a number but this will definitely save money not having multiple staff tied up during multiple reviews”*
- *This will be less time consuming but hard to estimate cost saving*
- *It makes sense to reduce administrative burden*
- *Some savings but not significant due to having only one (1) location at this time.*

K. Clarified what an off-site location is

In the proposed change in WAC 246-341-0342 the department clarified the difference between off-site locations as places where services are provided on a regularly scheduled ongoing basis, and when off-site locations are in a home or public setting that is not an

established off-site location; this removes some of the difficulty for providers keeping a list of ‘all off site locations’ while clarifying confidentiality requirements. Agencies made the following statements about general cost savings:

- *Reduction in staff time dedicated to this effort*
- *Also reduces "red tape" that blocks effective service delivery*
- *This amendment will be of benefit in regard to removal of off site tracking difficulty*

L. Removed requirements for providing fee schedules and funding options

In the proposed change in WAC 246-341-0420 the department removed requirements for providing fee schedules and funding option.

	Estimated savings	Explanation of estimate
Long term savings	\$1000	Staff cost savings
Short term savings	[no specifics reported]	[no specifics reported]

Agencies made the following statements:

- *Time savings, not sure how to estimate dollar value*
- *The patient is notified of the cost of treatment at the time of intake*
- *Reduces unnecessary administrative actions*
- *Proposed change reduces administrative burden*

M. Extending timeline for reporting critical incidents

In the proposed change in WAC 246-341-0420 the department extended the timeline for reporting critical incidents to the department from one business day to 48 hours to align with other regulations and clarified the definition of critical incident. An agency made the following statement:

- *Possible cost savings as staff would not have to work extra to provide and/or gather information to complete the instigative process so rapidly. Allows for the information gathering to happen during more normal hours.*

N. Background checks only apply to employees with unsupervised access

In the proposed change in WAC 246-341-0420 the department limited the requirement for background checks to apply to employees with unsupervised access rather than any employee with contact with individuals receiving services.

	Estimated savings	Explanation of estimate
Long term savings	\$100	Annual cost of Watch criminal history reports
Short term savings	[no specifics reported]	[no specifics reported]

Agencies made the following statements:

- *Cost savings will be small, not sure how to estimate.*
- *Much more efficient!*

O. Orientation to the agency to be within 90 days of hiring

In the proposed change in WAC 246-341-0510 the department extended the requirement for an orientation to the agency to be within 90 days of hire to align with statutory requirement for violence prevention training. A couple of participants noted that there would be new costs for the violence prevention training (\$300-\$500 annually for additional training expense/video purchase), however that cost is not caused by this proposed rule change; the requirement is in statute. Other participants noted general savings in that:

- *This would make tracking these items easier*
- *This is a nice change and offers flexibility*

P. Scope of practice

In the proposed change in WAC 246-341-0515 the department removed language about scope of practice and professional standards to simplify; clinical services must be provided by appropriately credentialed staff members, which are governed by statutes and rules for each health profession. An agency responded:

- *Not sure how to calculate costs savings but will definitely decrease the bureaucracy.*

Q. Clarifying clinical supervision

In the proposed change in WAC 246-341-0515 the department removed supervisory requirements that are covered in behavioral health professions regulations specifically the requirement for an “approved SUD supervisor” incorporating clarifications about clinical supervision agency requirements vs clinical supervision for professional licensing requirements from an Interpretive Policy filed as WSR 19-18-027.

	Estimated savings	Explanation of estimate
Long term savings	\$100,000 per year	Will reduce the number of supervisors needed
Short term savings	[no specifics reported]	[no specifics reported]

An agency noted generally that this would save some money in training requirements.

R. Changes in group therapy sizes

In the proposed change in WAC 246-341-0515 the department moved group counseling/treatment staff requirements into this section and changed group size maximum from 12 to 16 and removed the requirement for a second staff member for 12-16 youth since it was unclear where this requirement originated.

	Estimated savings	Explanation of estimate
Long term savings	\$10,000 to \$250,000 per year	Annual decrease in staffing costs
Short term savings	[no specifics reported]	[no specifics reported]

Savings estimates for this proposed WAC change also may be related to generating new income. Different participants estimated cost savings with the following explanations:

- \$10,000 Will not need as many staff.,
- \$60,000 Annual decrease in staffing costs for groups,
- \$250,000 Could allow for 33% more patients per group, reducing staffing costs
- \$75,000 more clients / group = lower cost per client to serve:

Participants also indicated the following general savings:

- While there will not necessarily be costs savings, this change could generate additional revenue.
- More patients in group and fewer facilitators will increase revenue

S. Assessment requirements

In the proposed change in WAC 246-341-0640 the department moved assessment requirements from 246-341-0610 to this section and reduced elements of a clinical assessment that were formerly required if applicable. The elements that are now removed include: Medical provider’s name(s), Medical concerns, medications currently taken, and employment or housing status.

	Estimated savings	Explanation of estimate
Long term savings	\$20,000	We constantly lose money on intakes because they take so long. If this can shorten them, it would be a significant savings
Short term savings	\$500	EHR update

T. Outpatient psychiatric medication – can be provided without another outpatient service

In the proposed change in WAC 246-341-0712 the department removed requirement that these services be provided with another outpatient service.

	Estimated savings	Explanation of estimate
Long term savings	\$100,000	annually
Short term savings	\$60,000	[no specifics reported]

A participant made the following statement:

- *We lose a LOT of money due to no shows by clients who do not want or need therapy or CM, but are required to enroll them in since they are getting medications. We have so many clients who should truly be MMO that we have 1 FTE just managing their paperwork and generating no revenue in the process. We could eliminate that position, decrease revenue killing no-shows, and just send clients to our psychiatric prescribers for treatment when that is all they need.*

U. Psychiatric medication – Advanced Registered Nurse Practitioners (ARNP)

In the proposed change in WAC 246-341-0712 the department added psychiatric ARNP to the list of those who could be accessible for emergency consultation.

	Estimated savings	Explanation of estimate
Long term savings	\$7,000	annually
Short term savings	[no specifics reported]	[no specifics reported]

An agency stated:

- *Hourly rates for ARNPs are significantly less than hourly rates for Psychiatrists*

V. Alcohol and Drug Information School

In the proposed change in WAC 246-341-0746 the department specified the requirements that are considered department-approved curriculum for ADIS. This creates flexibility for agencies; they can continue to use their current Change company curriculum, find an alternative curriculum, or create their own, as long as it meets the standards listed.

	Estimated savings	Explanation of estimate
Long term savings	\$2,000	Will not have to order books from the change company
Short term savings	[No specifics reported]	[No specifics reported]

An agency made the following general statement:

- *This helps reduce the cost burden that required us to purchase a proprietary curriculum*

W. Crisis mental health services – remaining with the individual in crisis

In the proposed change in WAC 246-341-0900 the department clarified the requirement that staff remain with the individual in crisis “in person or on the phone ”.

	Estimated savings	Explanation of estimate
Long term savings	\$20,000	Annually, this will allow us to bill for some crisis

		services we could not bill for in the past
Short term savings	[No specifics reported]	[No specifics reported]

X. Peers responding on crisis visits

In the proposed change in WAC 246-341-0910 the department changed requirements to allow peers to respond to a follow-up crisis visit without an MHP accompanying them. Agencies made the following general statements about cost savings:

- *Increases access to peer services and reduces the need for secondary staff when it is not clinically indicated.*
- *It is difficult to provide a concrete number, although anticipate significant savings.*
- *Unable to estimate but allows for better staff utilization and efficiency*

Y. Updating urinalysis requirements in Opioid Treatment Programs (OTP)

In the proposed change in WAC 246-341-1000 the department updated urinalysis requirement to include documenting a clinical need for additional urinalysis in order to help alleviate some billing issues. Agencies made the following general statements:

- *This could allow for billing to occur in our OTP. We will need time to see how things play out.*
- *Fewer urinalysis will help curb the cost of labs.*

Z. Crisis Stabilization and Triage

In the proposed change to WAC 246-341-1140 the department removed the requirement for a Mental Health Professional (MHP) 24 hours a day, 7 days a week and instead allows for an onsite MHP 8 hours per day and otherwise on call. An agency made the following general statement about cost savings:

- *Potential cost savings although our current model is best practice and it is unlikely that we would make significant changes based on contractual obligations that exist.*

Benefits

The department also asked workshop participants what kinds of benefits might be associated with the proposed rule changes. Specific benefits associated with certain rule changes were noted in A through Z above. The department also received overall positive feedback indicating broad benefits of this proposed rule change. Feedback included:

“So many of the areas of greatest concern have been corrected or revised and we are so appreciative!”

“Some regulations have remained in place for decades simply because it’s the way we’ve always done it. We rarely remember to ask for a historical perspective because we assume it can’t change. But you ask frequently and have discovered a number of areas that can and should be changed. It’s so refreshing - I’ve never before been excited about regulatory meetings (and I’ve been on so many WAC workgroups - not one resulted in anything close to the changes I think you will achieve).”

“Thank you for your commitment to reducing regulations in order to improve access to care and reduce costly and unnecessary burden on providers.”

“It was very clear you were working intentionally toward reducing any unnecessary regulatory requirements, and it was clear that you truly wanted and valued our input.”

Cost/Benefit Conclusion

According to workshop participants, partners, and interested parties, implementing this set of proposed rule changes will represent overall cost savings and result in numerous benefits.

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 stated previously.

Over the sixteen weeks of rules workshops, the department continually assessed interested party and partner feedback, and sought the advice of internal and external partners on the reduction and simplification of requirements. The following areas are some examples.

The existing rules contain many specific statutory requirements related to serving adults and children who have involuntary treatment orders according to chapter 71.05 RCW for adults and chapter 71.34 for youth, the department and workshop participants agreed that WAC language could be removed where the statutes gave specific direction. Workshop participants agreed that a policy guide would be more appropriate to place certain provisions that previously were in rule, including specifics related to court ordered services, how to determine if you are a branch site, and specific guidance on how to comply with statutes on involuntary treatment.

The department considered keeping the requirements for Alcohol and Drug Information School curriculum as it currently stands in rule, which requires agencies to use curriculum from a company that contracts with the department. After consulting with workshop participants, the department instead listed the required elements of the curriculum in rule and will no longer require agencies to use the curriculum from one specific company, though agencies may continue to use this curriculum if they choose. This allows flexibility for agencies to use other

curricula that meet the standards, including curriculum developed by the agency itself, which can allow for customization to certain populations that are served, as well as cost savings for the agency.

There were several instances where workshop participants asked the department to remove certain service certifications that are in rule but no longer functionally relevant in the state of Washington. One example is Emergency Service Patrol. Since the department is given specific rule-making authority over these services in statute, the department was unable to completely remove them from rule, but reduced and simplified these rules as much as possible.

The Health Care Authority entered into an agreement with the federal Centers for Medicare and Medicaid for the 1115 Medicaid Transformation Waiver. The special terms and conditions of this waiver contain a federal requirement for the state of Washington that residential substance use disorder treatment facilities allow residents to continue or seek medication assisted treatment on-site or facilitate access off site for residents with substance use disorders. These providers must also develop policies and practices that enhance care coordination, including transitions between levels of substance use disorder care following residential treatment stays. The department initially planned to do emergency rulemaking effective July 1, 2020 to immediately implement these provisions. However, residential treatment providers indicated that this would be a costly and currently unfunded requirement that needed time and more collaboration than allowed by a July 1 emergency rule. The department worked with the Health Care Authority and was able to refrain from emergency rule filing and spend additionally time seeking consensus among those impacted by this change. With input from Opioid Treatment Program directors, substance use disorder residential treatment providers, and the Health Care Authority, the department was able to resolve issues and craft rules that both satisfy the federal Waiver requirements and allow residential treatment providers to implement these requirements successfully.

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 rules do not require those to whom it applies to take an action that violates requirements of another 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 rules do not impose more stringent performance requirements on private entities.

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 rules do 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 rules have been part of ongoing coordination efforts between the department, the Department of Social and Health Services, the Health Care Authority, the Department of Children, Youth, and Families, our Legislative and Governor's Office partners, and the federal Substance Abuse and Mental Health Services Administration to ensure that the intent of the statutes have been carried out appropriately. In addition to these coordination efforts, and having participation in the rules workshop from some of our sister agencies in our rules workshops (including over 20 Health Care Authority staff members), the department hosts a monthly interagency coordination meeting related to behavioral health agencies where these issues are discussed with our regulatory and policy partners.