

Significant Legislative Rule Analysis (SA) Chapter 246-828 WAC For Rules Concerning Hearing and Speech

Section 1. What is the scope of the rule?

Engrossed Substitute Senate Bill (ESSB) 5601 (Chapter 301, Laws of 2009) created a new certification for speech-language pathology assistants effective July 26, 2010. The legislation expands the regulation of speech-language pathology services to include speech-language pathology assistants under the Hearing and Speech statute, Chapter 18.35 RCW. There are 35 states that regulate speech-language pathology assistants.

The amended statute defines a speech language pathology assistant as a person certified by the department to provide speech-language pathology services under the direction and supervision of either a licensed speech-language pathologist, or speech-language pathologist licensed as an educational staff associate by the superintendent of public instruction.

It also defines the supervision levels speech-language pathology assistants must work under. The Board of Hearing and Speech (board) must develop rules to outline the procedures or tasks allowable under each supervision level (direct and indirect). The legislation directs the board to approve education programs, and to develop rules for the requirements of “grandfathering.”

The proposed rules revise the existing hearing and speech rules to establish a scope of practice and requirements for speech-language pathology assistants. There is a growing shortage of speech-language pathologists. The speech-language pathology assistant will act as assistive personnel to the speech-language pathologist, therefore providing a benefit to the speech-language pathologist. Speech-language pathology assistants are used to support the speech-language pathologist’s caseload. This assistance will increase the speech-language pathologist’s availability, frequency, and intensity of services offered. The proposed rules establish the standards for education, training, and supervision; as well as the scope of practice for speech-language pathology assistants.

Section 2. What are the general goals and specific objectives of the proposed rule’s authorizing statute?

RCW 18.35.040 establishes the requirements to practice as a certified speech-language pathology assistant. The legislative intent of Chapter 18.35 RCW is to ensure the availability of hearing and speech services to persons in need of such services. The statutory goal is to safeguard the public health, safety and welfare, and to ensure the availability of services to the communicatively impaired people of this state.

The statute’s objectives the rules implement are:

1. To define certification requirements for speech-language pathology assistants.

2. To define specific procedures and tasks speech-language pathology assistants are allowed to do under direct and indirect supervision levels.
3. To approve education programs.
4. To develop a checklist and requirements for grandfathering.

Section 3. What is the justification for the proposed rule package?

The proposed rules will achieve the authorizing statute’s goals and objectives because the 2009 legislation requires the board to develop rules for certification, define specific procedures and tasks allowed under direct and indirect supervision levels, approve education programs, and develop a checklist and requirements for grandfathering. The provisions of the legislation must be implemented by July 26, 2010.

Section 4. What are the costs and benefits of each rule included in the rules package? What is the total probable cost and total probable benefit of the rule package?

1. Identification of total number of rules in package

- WAC 246-828-025: Definitions
- WAC 246-828-075: Supervisors of students
- WAC 246-828-112: Speech-language pathology assistants – Minimum standards of practice
- WAC 246-828-300: Expired credential
- WAC 246-828-617: Requirements for speech-language pathology assistant certification
- WAC 246-828-990: Hearing instrument fitter/dispenser, audiologist, speech-language pathologist, and speech-language pathology assistant fees and renewal cycle.

2. Non-Significant Rule Identification Table

Table: Non-Significant Rule Identification

#	WAC Section	Section Title	Section Subject	Reason
1	WAC 246-828-025	Definitions	Provides Definitions	Does not require action or enforcement.
2	WAC 246-828-075	Supervisors of students	Allows students to perform duties in the course of their training.	Does not require action or enforcement.

3. Significant Rule Analysis

- A. WAC 246-828-112 Speech-language pathology assistants – Minimum standards of practice

The proposed rule provides supervision requirements and guidance for speech-language pathologists and speech-language pathology assistants. The proposed rule identifies specific procedures and tasks that may be performed by the speech-language pathology assistants under direct and indirect supervision, and the procedures and tasks that are excluded from the speech-language pathology assistant scope of practice.

Analysis – ESSB 5601 amended the statute and required the board to develop rules to outline specific procedures or tasks allowed under direct and indirect supervision. It also added language stating that speech-language pathologists may not delegate acts, tasks, or procedures that exceed the education or training of assistive personnel. The proposed rule provides guidance to speech-language pathologists and speech-language pathology assistants regarding procedures and tasks that speech-language pathology assistants can perform and the level of supervision needed to perform them. It also limits procedures and tasks to ensure speech-language pathology assistants are not practicing beyond their level of education and training. This rule does not impose any costs on the speech-language pathologist or the speech-language pathology assistant.

Speech-language pathology assistants must be continually supervised by the speech-language pathologist. Some examples of tasks that may only be performed under direct supervision include participating during parent conferences, and assisting during evaluation and assessments. Some examples of procedures or tasks that may be performed under either direct or indirect supervision include performing speech-language and hearing screenings, implementing treatment plans and protocols, checking and maintaining equipment as directed by the speech-language pathologist, performing clerical duties, and signing treatment notes. Speech-language pathology assistants may not perform tasks that require diagnosis, evaluation, or clinical interpretation, screen and diagnose feeding and swallowing disorders, develop or modify treatment plans, implement therapy outside of the treatment plan, select their own caseload, discharge patients, or refer patients for additional services.

B. WAC 246-828-300 Expired credential

The proposed rule sets the requirements that speech-language pathology assistants must meet to renew an expired credential.

Analysis --. To renew an expired credential, the speech-language pathologist must comply with WAC 246-12 Part 2 and the requirements of this rule. Fees and requirements are as follows:

- If expired for one renewal cycle or less, the speech-language pathology assistant must pay the late renewal penalty fee of \$50.00 and pay the current renewal fee of \$70.00.
- If expired for more than one renewal cycle but less than three years, the speech-language pathologist must complete an abbreviated application form, pay the late renewal penalty fee of \$50.00, pay the current renewal fee of \$70.00, pay the expired certification reissuance fee of \$50.00, provide a written declaration that no action has been taken by a state or federal jurisdiction or hospital which would prevent or restrict the practitioner's practice of the profession, and provide a written declaration that he or she has not voluntarily given up any credential or privilege or has not been restricted in the practice of the profession in lieu of or to avoid formal action.

- If expired for over three years and the practitioner has been in active practice in another United States jurisdiction, the speech-language pathologist must complete an abbreviated application form, pay the late renewal penalty fee of \$50.00, pay the current renewal fee of \$70.00, pay the expired credential reissuance fee of \$50.00, submit verification of active practice from any other United States jurisdiction, provide a written declaration that no action has been taken by a state or federal jurisdiction or hospital which would prevent or restrict the practitioner’s practice of the profession, provide a written declaration that he or she has not voluntarily given up any credential or privilege or has not been restricted in the practice of the profession in lieu of or to avoid formal action, and if not previously provided, provide proof of AIDS education as required for the profession.
- If expired for over three years and the practitioner has not been in active practice in another United States jurisdiction, the speech-language pathologist must successfully pass the examination as provided in RCW 18.35.050, complete an abbreviated application form, pay the late renewal penalty fee of \$50.00, pay the current renewal fee of \$70.00, pay the expired credential reissuance fee of \$50.00, submit verification of active practice from any other United States jurisdiction, provide a written declaration that no action has been taken by a state or federal jurisdiction or hospital which would prevent or restrict the practitioner’s practice of the profession, provide a written declaration that he or she has not voluntarily given up any credential or privilege or has not been restricted in the practice of the profession in lieu of or to avoid formal action, and if not previously provided, provide proof of AIDS education as required for the profession.

C. WAC 246-828-617 Requirements for speech-language pathology assistant certification

The proposed rule outlines education requirements for speech-language pathology assistants. It sets requirements necessary to comply with in order to obtain a certification. The proposed rule establishes the standards for education and training, and the requirements for certification under the “grandfathering” option.

Analysis – ESSB 5601 added language to the statute outlining education requirements for certified speech-language pathology assistants. The proposed rule clarifies the statutory requirements and refers to definitions regarding a board-approved institution of higher education. The legislation directed the board to approve education programs for speech-language pathology certification. Board approved institutions of higher education for speech-language pathology assistants are defined in WAC 246-828-025 (1) (b).

The proposed rule explains the minimum educational requirements to receive a certification as a speech-language pathology assistant. In order to meet the requirements, applicants must have a Bachelor of Arts or Sciences degree, an Associate of Arts or Sciences degree, or a Certificate of Proficiency from a board approved institution. The approximate educational costs (tuition and fees) for Washington schools are:

Research Colleges: \$7600 per year
 Comprehensive Colleges: \$5500 per year

Community and Technical Colleges: \$2900 per year

This section also sets the requirements for a speech-language pathology assistant applicant to obtain a certification under the grandfathering option. Credentialing under this option must occur within one year of the effective date of the legislation.

Applicants applying for certification using the grandfathering option must have completed 600 hours of supervised experience within the last three years of the date of application and submit a competency checklist to the board by July 26, 2010. The board has approved a competency checklist and a work experience verification form that applicants and supervisors must complete and submit with their application for a credential under the grandfathering option. There is a possibility that the supervising speech-language pathologist may charge a fee to the speech-language pathology assistant to provide supervision of the 600 hours.

D. WAC 246-828-990 Hearing instrument fitter/dispenser, audiologist, speech-language pathologist, and speech-language pathology assistant fees and renewal cycle.

The proposed rule establishes the fees to obtain and renew the speech-language pathology assistant certification. 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.

Analysis –The estimated number of speech-language pathology assistant applications for fiscal year 2011 is 500, with an increase of 25 per year. The department expects this will remain constant and level out at a total of 550 credential holders per year beginning in fiscal year 2013. The costs to regulate the profession affect the fees and include rulemaking, credentialing, and disciplinary activities. To determine fees, the department compared the total costs for the profession to the total number of estimated certified speech-language pathology assistants. The proposed fees for speech-language pathology assistants are less than the current fees for the other three licensed professions in the hearing and speech program. This is the only one of the hearing and speech professions that is certified. The other professions are licensed (audiologist, hearing instrument fitter/dispenser, and speech-language pathologist).

4. Rule Package Cost-Benefit Conclusion

The proposed rules for a speech-language pathology assistant certification establish minimum education standards that are consistent with the functions and services that can be provided by assistive personnel to speech-language pathologists. These proposed rules establish the scope of practice and the standards for education, training, and supervision as directed by ESSB 5601.

Certified speech-language pathology assistants will be working under the supervision of speech-language pathologists. This will allow speech-language pathologists the opportunity to increase their availability and frequency of services offered to patients. This will also increase public safety and ensure that services offered by speech-language pathology assistants are provided according to the standards outlined in statute and rule. Although there are costs for individuals who elect to enter this profession and apply for certification, the benefits of this rule (i.e., ensuring that speech-language pathology assistants obtain the needed training, education, and expertise so they may practice safely) exceed the costs.

Section 5. What alternative versions of the rule did we consider? Is the proposed rule the least burdensome approach?

Descriptions of alternatives considered

None

Least burdensome determination

The proposed rules were developed during four well-attended rules workshops. The stakeholders discussed adding language that addressed confidentiality. They elected not to include confidentiality language as it may conflict with federal law. The group also discussed putting specific percentages in the rule regarding the amount of time speech-language pathology assistants are supervised. The language that was agreed on is included in WAC 246-828-112 and states that a speech-language pathology assistant must be providing direct services to students/clients/patients no less than ten percent of the time.

Section 6. Did you determine that the rule does not require anyone to take an action that violates 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.

Section 7. Did we determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless the difference is required in federal or state law?

The Department of Health determined that the proposed rules do not impose more stringent performance requirements on private entities than on public entities.

Section 8. Did you determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, did we 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 applicable federal regulation or statute.

Section 9. Did we demonstrate that the rule has been coordinated, to the maximum extent possible, with other federal, state, and local laws applicable to the same activity or subject matter?

There are no other applicable laws.