

3/19/10

Significant Legislative Rule Analysis (SA)
WAC 246-840-581 through WAC 246-840-583
Rules Concerning Early Remediation Program
Nursing Care Quality Assurance Commission

Section 1. What is the scope of the rule?

Background

There are approximately 98,000 licensed practical nurses (LPNs), registered nurses (RNs), advanced registered nurse practitioners (ARNPs) and nursing technicians (NTs) practicing in Washington State. While the majority of nurses practice safely, a number of nurses do not. The Nursing Care Quality Assurance Commission (NCQAC) receives complaints of poor nursing care, alleged crimes committed by nurses, and nurses allegedly harming patients. The Department of Health (DOH) investigates these complaints. The NCQAC then determines if there is sufficient evidence to support charges.

If there is sufficient information in the complaint, the NCQAC authorizes an investigation and prioritizes the case as an “A”, “B”, or “C”, based on the seriousness of the alleged misconduct. Priority “A” and “B” cases include allegation of abuse and neglect, patient harm, and patient deaths. Due to the serious nature of the complaints, investigators focus the limited program resources on these most serious “A” and “B” complaint groups. As a consequence, the program does not have sufficient resources to address all of the group “C” complaints (such as substance abuse or drug diversion cases that do not always pose a risk or harm to the patients).

There are approximately 80 to 100 new cases opened per month. After conducting an initial review of the cases, the NCQAC generally finds that approximately 50 of these cases have sufficient evidence to warrant an investigation. Generally, the types of cases consist of the following breakdown- 0 – 5% A, 0 – 5% B and 90 – 100% C.

The statute requires the NCQAC to complete investigations within 170 days. Starting in July, 2008 the NCQAC determined the time frame for review, determination, and resolution of investigations was averaging approximately two years. Prior to that time there was a centralized pool of investigators completing approximately four investigations per month per investigator. Consequently, a backlog of unresolved cases started accumulating. To help address the future growth in the number of backlog cases the NCQAC is proposing to create an alternative process (as compared to the standard full investigation for misconduct) for nurses to address and resolve group “C” practice deficiencies complaint cases. This proposed process, called the Early Remediation Program, offers nurses the option to enter into an action plan that is developed by a NCQAC Early Remediation Program panel. The action plan usually requires on-the-job training and may require the nurse to be monitored by their employer. If the nurse and their employer

agree to the plan, and they complete the action plan within a four month period, the panel can close the complaint. The NCQAC is currently implementing this program using a commission policy. This proposed alternative program has allowed the NCQAC to establish action plans and is currently monitoring to determine if the nurses can complete the required elements. The Early Remediation Program anticipates nurses will generally be able to complete the entire program within the statutorily required timeframe of 170 days. With the proposed Early Remediation Program, the NCQAC will be able to resolve approximately 50 cases per month. There are currently eight nursing investigators. Each investigator has a target to close six investigations per month, which includes a mix of A, B and C priority cases.

Although the proposed Early Remediation Program will enable the NCQAC to investigate and close the anticipated 50 new cases opened monthly, the NCQAC recognizes there is still the backlog of approximately 500 cases, which has accumulated since 2008. The NCQAC is concerned with the backlog and has developed a decision package that requests additional staff to investigate all of the cases in the backlog.

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

RCW 18.79.010

Purpose.

It is the purpose of the nursing care quality assurance commission to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline.

Rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state of Washington.

RCW 18.79.110

Commission — Duties and powers — Rules — Successor to boards.

The commission shall adopt such rules under chapter [34.05](#) RCW as are necessary to fulfill the purposes of this chapter.

RCW 18.130.050

Authority of disciplining authority.

Except as provided in RCW [18.130.062](#), the disciplining authority has the following authority:

- (1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;
- (2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter;
- (3) To hold hearings as provided in this chapter;
- (4) To issue subpoenas and administer oaths in connection with any investigation, consideration of an application for license, hearing, or proceeding held under this chapter;
- (5) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;.....

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

This alternative program provides an opportunity for the NCQAC to process new complaints more quickly. This will result in nurses completing remedial on-the-job training which will help reduce the likelihood they repeat unintentional errors when working with patients.

The proposed rule establishes a voluntary alternative approach for nurses to address and resolve complaints made against them in a timely, efficient and effective manner. These rules meet specific components of the NCQAC mandate (i.e., enforcing consistent standards of practice and discipline). The NCQAC needs the rules to put licensees on notice of the Early Remediation Program.

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 246-840-581 Early Remediation Program Purpose.

WAC 246-840-582 Early Remediation Program Definitions.

WAC 246-840-583 Early Remediation Program Criteria.

2. Non-Significant Rule Identification Table

Table: Non-Significant Rule Identification

#	WAC Section	Section Title	Section Subject	Reason
1	WAC 246-840-581	Early Remediation Program Purpose	Purpose of rule	History of why the commission is proposing an alternative.
2	WAC 246-840-582	Early Remediation Program Definitions	Definitions	Define terms used in the rules.

3. Significant Rule Analysis

WAC 246-840-583 establishes the criteria for the Early Remediation Program. This program is voluntary. Therefore, there are no regulatory compliance costs. The program does, however, offer benefits to the nurses with an open investigation, their employer, the NCQAC and the residents of Washington State.

The Proposed Early Remediation Program Process

The NCQAC determines if the complaint is a Group C complaint and therefore, eligible to be addressed in the Early Remediation Program. The NCQAC staff calls the complainant to verify the complaint and request additional information, if necessary. The NCQAC staff calls the nurse to discuss the complaint. The NCQAC may offer the nurse to resolve his/her Group C complaint by using the Early Remediation Program process. If the nurse elects to follow the Early Remediation Program process, the NCQAC sends the file to the Early Remediation Program Panel.

The Early Remediation Program Panel reviews the complaint and develops an action plan that may include required training or employer monitoring. If the nurse and his/her employer agrees to the plan, and they complete the action plan within a four month period, the NCQAC Early Remediation Program panel may close the complaint.

Benefits to Washington Citizens

- Improves the competency and quality of care provided by nurses participating in the Early Remediation Program. Nurses must complete any required training identified in the action plan. This will reduce the number of unintentional bad outcomes.
- The new program will not add to the current nursing shortage problem by keeping nurses in the job pool.

Benefits to Nurses that elect to participate in the Early Remediation Program

- Improves the nurses' competency and quality of care they provide by completing the required on-the-job training identified in the action plan.
- Shortens the stressful time period when their complaint is unresolved or still "open."
- The program is voluntary. The nurse can opt to stop the Early Remediation Program and have the complaint addressed in the full investigation process at any time.
- May save the nurse's job. The NCQAC assumes some employers will terminate nurses that have active complaint/investigation cases open.
- May save the nurse money because they will not have to hire an attorney. Nurses are not required to have an attorney for the Early Remediation Program. They generally hire attorneys in the full investigation process.

Benefits to Employers of Nurses participating in the Early Remediation Program

- The Early Remediation Program is voluntary, i.e., the employer is not required to participate in the process. The employer can terminate the nurse or elect not to participate.
- The employer would save on costs of hiring, orientating and training new employees. Any required education in the action plan (e.g., 10 hour course at \$35 an hour (mean RN salary in Washington) and a 10 hour monitoring process \$350 for a total of \$700) will be substantially less than having to retrain a new employee. The NCQAC's assumption is the average time to train and orient a new nurse is eight hour days for eight weeks. (\$35.00 hr. times 8 hrs. per day times 40 days = \$11,200). Employers may also have difficulty hiring a replacement as there is a current shortage of nurses in Washington State.
- Saves program costs, which does not result in increased licensing fees. The NCQAC process is less costly than the cost to complete a full investigation process. The Early Remediation Program will save money for DOH by having the Nurse complete training immediately and correct the standard of care issue(s). This should reduce the number of future complaints on the Nurse. This will save time and resources on reduced future investigations. The program reduces the cost to DOH by reducing the number of investigations sent to the commission for review and to attorneys for negotiations and hearings. With this program the NCQAC will expend less staff attorneys or attorneys from the Attorney General's Office time, than the alternative full investigation process.

Cost Benefit Summary

Participation in the program is voluntary, not mandatory. The nurse agrees to pay for any costs associated with a class or compliance. There are no required regulatory compliance costs in this proposed rule. Therefore, the total probable benefits of the rule, as described above, exceed the total probable costs.

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

Descriptions of alternatives considered

The first alternative to the Early Remediation Program was to leave all cases in full investigation and continue doing investigations the same way. The cases would take approximately two years for completion. This would not address the current backlog of cases or need for timely correction of practice deficiencies.

The second alternative to the Early Remediation Program was to continue to raise the below threshold criteria to close more cases. This was unacceptable due to the increased risk to patient safety.

The third alternative was to develop the Early Remediation Program as an alternative to the full investigation process. The program would re-educate the nurses on the deficiencies identified in his/her standard of care and close the cases in investigation within six months.

Least burdensome determination

The best alternative was to develop the Early Remediation Program to complete investigations and provide re-education to the nurses within six months. During the development of the Early Remediation Program the following was identified:

- Provide patient safety to Washington residents.
- Reduce the number of man hours needed to complete an investigation.
- Reduce the time involved in the completion of the investigations from two years to six months.
- Involve the nurse in a proactive manner to correct deficiencies identified in a timely manner for patient safety.
- Reduce the volume of documentation required in the investigations.
- Reduce the legal fees, archive cost and printing cost.

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?

It was determined the rule does 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 rule does 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.