



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

*PO Box 47890 • Olympia, Washington 98504-7890
Tel: 360-236-4030 • TDD Relay Service: 800-833-6388*

December 6, 2022

To Whom It May Concern,

The Department of Health (department) has adopted amendments to Chapter 246-341 WAC, Behavioral Health Agency Licensing and Certification Requirements. The department is updating the chapter of rules for licensed and certified behavioral health agencies as the next step in a multi-phase plan to modernize licensing and certification requirements. The adopted rules streamline and improve licensing regulations and the licensing process with the goal of decreasing regulatory burden and redundancy while increasing access to high-quality behavioral health services. The rules increase flexibility and decrease the administrative burden associated with licensing processes. New compliance requirements were added to certain services to align requirements for substance use disorder and mental health services, making it easier for agencies to provide co-occurring services and to assure that similar standards are applied to both services.

A comprehensive process that included workshops, internal and external discussion and multiple revisions produced this chapter update. The department is grateful to everyone who participated in this rulemaking process.

The adopted amendments to WAC 246-341-0342 will become effective on December 10, 2022. The remainder of the WAC sections affected by this order will become effective on May 1, 2023. A copy of the adopted rules are attached.

The adopted rules are different from the text of the proposed rule as it was published in the Washington State Register as WSR 22-17-140. The following clarifying changes were made to the proposed rules upon adoption:

WAC TITLE	CHANGE MADE
WAC 246-341-0110 Behavioral health – Available certifications.	<ul style="list-style-type: none"><li data-bbox="683 1654 1360 1789">• In subsection (1)(i), replaced the term “medically supported withdrawal management” with “withdrawal management”, to be consistent with WAC 246-341-1100.

<p>WAC 246-341-0200 Behavioral health – Definitions.</p>	<ul style="list-style-type: none"> • Updated the reference to RCW 43.20A.890 in the definition of “licensed” or “licensure.” This statute has been recodified as RCW 41.05.750. • Added a reference to RCW 43.70.080(5), regarding the department’s authority to certify problem gambling and gambling disorder treatment programs.
<p>WAC 246-341-0300 Agency licensure and certification – General information.</p>	<ul style="list-style-type: none"> • Removed the word “treatment” from “behavioral health treatment services” to be consistent with the rest of the chapter as there is a spectrum of behavioral health services, such as support and peer services, in this chapter. • Clarified that the references to “30 days” throughout this section are to calendar days. • In subsection (6)(b), adding a certification, clarified that agencies must submit an application for certification before providing the services listed under that certification. In the proposed language, the department incorrectly stated that agencies must “obtain” certification first, which did not align with what is allowed in chapter 71.24 RCW. • In subsection (10), effective date, clarified that the certification is effective for up to 12 months from the “date of issuance”, rather than the “effective date.”
<p>WAC 246-341-0320 Agency licensure and certification – On-site reviews and plans of correction.</p>	<ul style="list-style-type: none"> • In subsection (4)(a), removed the term “negotiated” as it pertains to the time frame agreed upon by the agency and the department, as it is redundant.
<p>WAC 246-341-0335 Agency licensure and certification – Denials, suspensions, revocations, and penalties.</p>	<ul style="list-style-type: none"> • Throughout this section, as a technical correction, deleted the reference to the department suspending or revoking an agency’s ability to provide specific behavioral health services, as the department technically only takes enforcement action on licenses or certifications. This includes modifying a certification, which has the same effect as the proposed language. • In subsection (1)(a), clarified the existing requirement that the department can take enforcement action if the agency fails to meet the “applicable” requirements in chapter 246-341 WAC and added chapters 71.24 RCW, 71.05, 71.34 and 71.12 RCW; or RCW 41.05.750.
<p>WAC 246-341-0342 Agency licensure and certification - Off-site locations.</p>	<ul style="list-style-type: none"> • In subsection (6)(b), clarified that an opioid treatment program must comply with 21 C.F.R. Parts 1300, 1301, and 1304 “and any applicable rules of the Pharmacy Quality Assurance Commission.”

<p>WAC 246-341-0370 Agency licensure and certification – Appealing a department decision.</p>	<ul style="list-style-type: none"> As in WAC 246-341-0335, deleted the reference to the agency appealing the department’s decision regarding an agency’s ability to provide specific behavioral health services, as the department can technically only take enforcement action on licenses or certifications, including modifying a certification. Agencies may appeal decisions regarding modifications to certifications.
<p>WAC 246-341-0425 Agency administration – Individual service record system.</p>	<ul style="list-style-type: none"> In subsection (10), removed the term “mental health”, so that it refers more generally to services provided under the supervision of the DOC, and added the phrase “except as restricted by federal law or regulation” to clarify that there are cases in which individual consent is required for the release of information. This clarifying change was made as a result of a suggestion from an interested party that was received during the public comment period.
<p>WAC 246-341-0600 Individual rights.</p>	<ul style="list-style-type: none"> In subsection (2)(h)(i), deleted the reference to RCW 71.32.150, as that is specific to conditions for noncompliance, and replaced it with a reference to chapter 71.32 RCW.
<p>WAC 246-341-0605 Complaint process.</p>	<ul style="list-style-type: none"> In subsection (5), corrected the reference to the department’s ability to assess a fee under RCW 43.70.250.
<p>WAC 246-341-0640 Individual service record content.</p>	<ul style="list-style-type: none"> In subsection (2)(g), inserted language that clarifies in which instance the individual service record should include the required documentation. Additionally, deleted the word “permission” and replaced it with “consent, or if applicable, the consent of the individual’s parent or legal representation” when describing the release of the information to the new service provider. In subsection (2)(h), inserted language that clarifies in which instance the individual service record should include a copy of a third-party report. In subsection (2)(j), clarified that the individual service record must include a crisis plan, if one has been developed “or obtained.”
<p>WAC 246-341-0650 Access to individual service records.</p>	<ul style="list-style-type: none"> This section is being repealed. The contents of this section were moved to WAC 246-341-0425. References to WAC 246-341-0650 have been updated throughout the chapter.
<p>WAC 246-341-0713 Psychiatric medication monitoring services – Service standards.</p>	<ul style="list-style-type: none"> In subsection (3), clarified that “a support plan or individual service plan is not required when an individual is only receiving psychiatric medication monitoring services.”

<p>WAC 246-341-0715 Crisis support services – Service standards.</p>	<ul style="list-style-type: none"> • In subsection (2)(c), deleted the reference to RCW 71.05.710, as that statute is specific to home visits by mental health professionals and this rule has broader applicability.
<p>WAC 246-341-0720 Supported employment behavioral health services – Service standards.</p>	<ul style="list-style-type: none"> • Updated the caption of this section to reference “behavioral health” rather than “mental health and substance use disorder”, to be consistent with the rest of chapter. Similarly, the department updated the description of these services.
<p>WAC 246-341-0722 Supportive housing behavioral health services – Service standards.</p>	<ul style="list-style-type: none"> • Updated the caption of this section to reference “behavioral health” rather than “mental health and substance use disorder”, to be consistent with the rest of chapter. Similarly, the department updated the description of these services.
<p>WAC 246-341-0725 Mental health peer respite – Certification standards.</p>	<ul style="list-style-type: none"> • In subsection (3)(c)(i), updated the term “governing board” to “governing body.”
<p>WAC 246-341-0730 Clubhouses.</p>	<ul style="list-style-type: none"> • In subsection (2)(e), clarified that clubhouses must be comprised of structured activities “in accordance with RCW 71.24.650(5)”, which includes the activities that were listed in (2)(e)(i) through (2)(e)(vii).
<p>WAC 246-341-0737 Behavioral health outpatient intervention, assessment and treatment services – Certification standards.</p>	<ul style="list-style-type: none"> • In subsection (4), corrected a reference to RCW 71.05.445.
<p>WAC 246-341-0901 Behavioral health outpatient crisis outreach, observation and intervention services – Certification standards.</p>	<ul style="list-style-type: none"> • In subsection (7)(c), deleted the reference to RCW 71.05.710, as that statute is specific to home visits by mental health professionals and this rule has broader applicability.
<p>WAC 246-341-1105 Behavioral health residential and inpatient intervention, assessment and treatment services – Certification standards.</p>	<ul style="list-style-type: none"> • In subsection (4)(c), clarified that when the discharge is unplanned and the parent or legal guardian is unavailable, the agency must contact the “relevant state’s child protective services.”
<p>WAC 246-341-1108 Residential and inpatient substance use disorder treatment services – Service standards.</p>	<ul style="list-style-type: none"> • In subsection (7), clarified that the documentation requirements listed in this subsection are in addition to the general documentation requirements listed in WAC 246-341-0640.

<p>WAC 246-341-1131 Involuntary behavioral health residential and inpatient services – Certification standards.</p>	<ul style="list-style-type: none"> • Clarified that the individuals served under this certification are either those subject to a civil commitment or court-order under chapter 71.05 RCW or 71.34 RCW or those “who have been court ordered to receive treatment at a certified agency pursuant to chapter 10.77 RCW” to align with statutory authority. • In subsection (1)(c), replaced “NGRI behavioral health treatment” with “court ordered treatment at a certified agency pursuant to chapter 10.77 RCW.”
<p>WAC 246-341-1137 Intensive behavioral health treatment services – Certification standards.</p>	<ul style="list-style-type: none"> • In subsection (12)(e), replaced the term “permission” with “consent.” • In subsection (13)(d)(ii), clarified that “the individual may consent or refuse to consent” to the release of records. • In subsection (13)(e), replaced the term “residents” with “individuals receiving services at the agency.”
<p>WAC 246-341-1140 Crisis stabilization unit and triage – Certification standards.</p>	<ul style="list-style-type: none"> • In subsection (6), replaced the term “mental health” with “behavioral health.”

The following table summarizes all the comments received and the department’s response:

TOPIC	CITATION	COMMENTS ON PROPOSED RULES	AGENCY RESPONSE
<p>Involuntary behavioral health residential and inpatient services</p>	<p>WAC 246-341-1131(2)(b)(i)</p>	<p>The commenter expressed concern with the requirement that a secure environment have “all doors and windows leading to the outside locked at all times.” The concern is that this language is not consistent with fire codes and that facilities may be unable to comply with this language and with building fire requirements at the same time.</p>	<p>The Facilities Program received guidance from the Construction Review Services Program and the State Fire Marshal’s Office that the current rule language aligns with the state adopted building codes and the CMS (federal) adopted life safety codes which contain provisions for controlling egress.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>

<p>Outpatient crisis outreach, intervention and observation services</p>	<p>WAC 246-341-0901(4)(a)</p>	<p>The commenter expressed concern with the requirement that an agency providing outpatient crisis outreach, intervention and observation services also provide 24/7 telephone crisis support. The concern is that facilities with expertise in outpatient crisis services often do not have overlapping expertise in running crisis phone lines, which may disincentivize facilities from providing crisis services and lead to a decline in quality for patients. The commenter requested that this requirement be removed.</p>	<p>This is an existing requirement. Due to the fact that this recommendation was not introduced during the language drafting workshops that the department held with interested parties, this change will not be incorporated at this time, but may be considered during a future rulemaking project.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>
<p>Defining “face-to-face” to be inclusive of synchronous video conferencing</p>	<p>WAC 246-341-0200(21)</p>	<p>The commenter expressed concern that expanding the definition of “face-to-face” to include telehealth will allow out of state providers to provide services to Washington residents, which may not be culturally appropriate.</p>	<p>Individuals must be credentialed in Washington state to provide behavioral health services. Additionally, a physical address within Washington state is required to apply for a behavioral health agency (BHA) license. Defining “face-to-face” to include the use of synchronous video conferencing does not allow exceptions to the requirements above. It does allow licensed BHAs within the state to utilize synchronous video conferencing to meet the intent of the existing face-to-face requirement in the</p>

			<p>WAC, which has been allowed under Secretary of Health waivers granted during the COVID-19 pandemic.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>
<p>Release of information to the Department of Corrections</p>	<p>WAC 246-341-0650(5) (repealed) and WAC 246-341-0425(10)</p>	<p>This rule language refers to individuals receiving mental health services under the supervision of the Department of Corrections (DOC). The commenter suggested that the department replace the term “mental health” with “behavioral health” to be inclusive of substance use disorder services. The commenter also expressed concern with the rule stating that “the information released [to the DOC] does not require the consent of the individual”, since there are federal laws and regulations that may restrict the release of this information.</p>	<p>The department believes that these are reasonable clarifications that do not detract from the intent or function of the rule.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>Yes, the department removed the term “mental health” from WAC 246-341-0425(10), so that it refers more generally to services provided under the supervision of the DOC. The department also added the phrase “except as restricted by federal law or regulation” to clarify that there are cases in which individual consent is required for the release of information.</p>
<p>Guide to behavioral health agencies in Washington</p>	<p>Chapter 246-341 WAC</p>	<p>The commenter suggested the department develop and make available to the public a downloadable, user-friendly guide to behavioral healthcare facilities in the state, including a map and</p>	<p>An agency directory is posted on the following webpage: Behavioral Health Agencies Directory DOH 606-019 (wa.gov). This directory lists the different services that each agency provides. Additionally, the department is working on</p>

		<p>directory of the facilities.</p>	<p>an interactive map that will allow users to select a service and see a map of agencies that provide that service.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>
<p>Guide for Designated Crisis Responders (DCRs)</p>	<p>Chapter 246-341 WAC</p>	<p>The commenter suggested that the department develop a guide for DCRs that addresses not only bed locations nearest the client's family and support system but also the perceived needs of the client.</p>	<p>A tool for DCRs is currently being explored, with the Health Care Authority leading the work around developing a way to track bed availability.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>
<p>Psychiatric medication management services</p>	<p>WAC 246-341-0739(2)(a)</p>	<p>The commenter expressed concern with the rule's exclusion of psychiatric advanced registered nurse practitioners (ARNPs) from being able to provide consultation to physicians or ARNPs without board eligibility in psychiatry. The rule currently allows only for psychiatrist consultation.</p>	<p>The department believes that the exclusion of psychiatric ARNPs is a potential oversight in the existing rule language. However, due to the fact that the department was not able to discuss this issue with interested parties during rules workshops for this project, no changes will be made at this time. This topic will be further explored during a future rulemaking project. In the interim, the department may be able to work with agencies on other options, such as an alternative methods approval.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>

Any person may petition the adoption or amendment of these rules in accordance with RCW 34.05.330.

For more information regarding these rules you may contact me by email at Julie.tomaro@doh.wa.gov or by phone at 360-236-2937.

Cordially,

Julie Tomaro, Facilities Program Manager