



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: March 12, 2025

TIME: 2:08 PM

WSR 25-07-052

Agency: Department of Health

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 24-24-023 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Residential Treatment Facilities (RTF) regulations, private psychiatric hospital regulations, and behavioral health agency (BHA) regulations as related to licensing fees of Indian health care providers as establishments.

The Department of Health (department) is proposing a new rule in chapter 246-337 WAC and a new rule in chapter 246-322 WAC to establish fees necessary for the department to receive and process an attestation that a tribal RTF or tribal private psychiatric hospital meets state minimum standards for licensure. Additionally, the department is proposing updates to WAC 246-322-020 and 246-337-010 to clarify that the licensure process described in each section does not apply to tribes seeking licensure via attestation. Finally, the department is proposing to update WAC 246-341-0367 regarding BHA tribal attestation fees to align with the proposed RTF and private psychiatric hospital tribal attestation fees.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
04/22/2025	1:30 p.m.	Zoom link Register in advance for this webinar: https://us02web.zoom.us/webinar/register/WN_1sWWqq-tQ4KtzWqDiytsSw After registering, you will receive a confirmation email containing information about joining the webinar.	This hearing will be held virtually only.

Date of intended adoption: 04/25/25 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Michelle Weatherly

Address: PO Box 47843

Olympia, WA 98504-7843

Email: michelle.weatherly@doh.wa.gov

Fax: n/a

Other <https://fortress.wa.gov/doh/policyreview/>

Beginning (date and time) Date and time of this filing

Assistance for persons with disabilities:

Contact: Michelle Weatherly

Phone: 360-236-2992

Fax: n/a

TTY: 711

Email: michelle.weatherly@doh.wa.gov

Other

Purpose of the proposal and its anticipated effects, including any changes in existing rules: In order to comply with the requirements of RCW 43.70.250, the department must "set [the] fee[s] for each program at a sufficient level to defray the costs of administering that program..." It is therefore necessary for the department to establish this fee to support the administrative work involved in receiving and processing these tribal attestations. The department is required to set in rule all fees associated with licensing according to RCW 43.70.250(2) and (3). This administrative fee and attestation process was agreed upon as part of two listening sessions and a series of five tribal rules workshops with the tribes.

These rules only apply to tribes attesting that a tribal BHA, RTF, or tribal private psychiatric hospital meets state minimum standards for licensure.

Reasons supporting proposal: In 2019, the legislature passed Engrossed Second Substitute Senate Bill 5432 changing the definition of "licensed or certified behavioral health agency" in RCW 71.24.025 to include "an entity with a tribal attestation that it meets state minimum standards for a licensed or certified behavioral health agency." Substitute House Bill (SHB) 2075 (chapter 204, Laws of 2024) extended licensure by tribal attestation to RTFs and private psychiatric hospitals.

The department participated in five rules workshops with tribal representation to discuss the fee and attestation process. This proposed rulemaking action puts into rule the decisions made at the workshops regarding the attestation process and fee.

Statutory authority for adoption: RCW 43.70.250, 43.70.280, 71.24.037, and SHB 2075 (chapter 204, Laws of 2024) codified as RCW 71.12.460

Statute being implemented: RCW 71.12.460

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Department of Health

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Michelle Weatherly	111 Israel Rd SE, Tumwater, WA 98501	360-236-2992
Implementation: Michelle Weatherly	111 Israel Rd SE, Tumwater, WA 98501	360-236-2992
Enforcement: Michelle Weatherly	111 Israel Rd SE, Tumwater, WA 98501	360-236-2992

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name
- Address
- Phone
- Fax
- TTY

Email

Other

No: Please explain: The proposed rules establish a fee and require Indian Health Care Providers as part of the application process to attest to completing all necessary criteria to qualify. The rule is exempt from economic analysis because it is a fee rule, and qualifies as a procedural rule under RCW 34.05.328 (5)(b)(ii) and (vi).

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- | | |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: The proposed rules establish a fee and require Indian Health Care Providers as part of the application process to attest to completing all necessary criteria to qualify. The rule is exempt from economic analysis because it is a fee rule, and qualifies as a procedural rule under RCW 34.05.310 (4)(f) and (g).

(2) Scope of exemptions: *Check one.*

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name
Address
Phone
Fax
TTY

Email
Other

Date: March 12, 2025

Name: Todd Mountin, PMP for Jessica Todorovich, MS

Title: Deputy Chief of Policy for Acting Secretary of Health

Signature:

A handwritten signature in black ink, appearing to read "Todd Mountin". The signature is written in a cursive style with a large initial "T".

AMENDATORY SECTION (Amending WSR 95-22-012, filed 10/20/95, effective 11/20/95)

WAC 246-322-020 Licensure—Initial, renewal, modifications. (1)

A person shall have a current license issued by the department before operating or advertising a private psychiatric hospital.

(2) The private psychiatric hospital licensure process described in this section does not apply to a tribe that is licensed or seeking licensure via attestation as described in WAC 246-322-985.

(3) An applicant for initial licensure shall submit to the department, (~~forty-five~~) 45 days or more before commencing business:

(a) A completed application on forms provided by the department;

(b) Certificate of need approval according to the provisions of chapter 246-310 WAC for the number of beds indicated on the application;

(c) Verification of department approval of facility plans submitted for construction review according to the provisions of WAC 246-322-250;

(d) A criminal history background check in accordance with WAC 246-322-030(2);

(e) Verification of approval as a private psychiatric hospital from the state director of fire protection according to RCW 71.12.485;

(f) The fee specified in WAC 246-322-990; and

(g) Other information as required by the department.

(~~3~~) (4) The licensee shall apply for license renewal annually at least (~~thirty~~) 30 days before the expiration date of the current license by submitting to the department:

(a) A completed application on forms provided by the department;

(b) The fee specified in WAC 246-322-990; and

(c) Other information as required by the department.

(~~4~~) (5) At least (~~sixty~~) 60 days prior to transferring ownership of a currently licensed hospital:

(a) The licensee shall submit to the department:

(i) The full name and address of the current licensee and prospective owner;

(ii) The name and address of the currently licensed hospital and the name under which the transferred hospital will operate;

(iii) Name of the new administrator; and

(iv) Date of the proposed change of ownership; and

(b) The prospective owner shall apply for licensure according to subsection (~~2~~) (3) of this section.

NEW SECTION

WAC 246-322-985 Licensure—Fee requirements for tribal attestations. (1) An Indian health care provider as defined in RCW 71.24.025 may attest that its private psychiatric hospital meets state minimum standards for a licensed private psychiatric hospitals, as described in RCW 71.12.460.

(2) A tribe that is pursuing attestation with the department must submit an administrative processing fee to the department for any new, renewed, or amended attestation as specified in WAC 246-341-0367.

(3) Tribal attestations are renewed every three years from the date of signature by all parties.

WAC 246-337-010 Licensing. (1) An applicant may not open or operate an RTF until all requirements for licensure set forth in this section are met and the department has issued an initial, renewed, or amended RTF license listing the service type(s) approved to be provided in the RTF.

~~((1))~~ (2) The RTF licensure process described in this section does not apply to a tribe that is licensed or seeking licensure via attestation as described in WAC 246-337-985.

(3) Initial licensure. An applicant for an initial RTF license must submit to the department:

(a) A completed application on form(s) provided by the department, signed by the owner or legal designee;

(b) Disclosure statements and criminal history background checks obtained within the previous three months of the application date for the administrator in accordance with WAC 246-337-055;

(c) The license fee specified in WAC 246-337-990;

(d) Policies and procedures in compliance with chapter 71.12 RCW and this chapter for review and approval by the department;

(e) A completed construction review application and fee, and functional program plan according to WAC 246-337-040;

(f) Written approval of the chief of the Washington state patrol, through the director of fire protection, as required by RCW 71.12.485 and chapter 212-12 WAC; and

(g) Other information as required by the department.

~~((2))~~ (4) An RTF license is effective for one year from the date it is issued.

~~((3))~~ (5) License renewal. At least ~~((thirty))~~ 30 calendar days before the expiration date of the current license, the licensee must submit to the department:

(a) A completed application on form(s) provided by the department;

(b) Disclosure statements and criminal history background checks obtained within the previous three months of the application date for the administrator in accordance with WAC 246-337-055;

(c) The renewal fee specified in WAC 246-337-990;

(d) Written approval from the chief of the Washington state patrol, through the director of fire protection, as required by RCW 71.12.485 and chapter 212-12 WAC; and

(e) Other information as required by the department.

~~((4))~~ (6) License amendment. Prior to changing any of the service type(s) provided in the facility, number of resident beds, location or use of rooms, the physical structure of the facility, a change in the administrator, or a change in address, the licensee must submit to the department:

(a) Notification in writing of the intended change;

(b) A completed application on form(s) provided by the department;

(c) The administrative fee and other applicable fee(s) specified in WAC 246-337-990;

(d) A request to the department to determine the need for review by the department's construction review services and Washington state fire marshal;

(e) If changing service type, policies and procedures in compliance with chapter 71.12 RCW and this chapter for review and approval by the department; and

(f) If changing administrators, disclosure statements and criminal history background checks obtained within the previous three months of the application date for the administrator in accordance with WAC 246-337-055.

~~((5))~~ (7) Change of ownership. Prior to selling, leasing, renting or otherwise transferring control of an RTF that results in a change of the state Uniform Business Identifier Number, the licensee must submit to the department:

(a) The full name and address of the current licensee and prospective licensee;

(b) The name and address of the licensed RTF and the name under which the RTF will operate;

(c) Date of the proposed change;

(d) Plans for preserving resident records, consistent with WAC 246-337-095; and

(e) Other information as required by the department.

~~((6))~~ (8) A prospective new RTF owner shall apply for licensure by complying with subsection ~~((1))~~ (3) of this section.

~~((7))~~ (9) An RTF license is not transferable.

~~((8))~~ (10) The licensee shall:

(a) Maintain and post a current RTF license in a conspicuous place on the premises;

(b) Provide services limited to each department approved service type; and

(c) Maintain the occupancy level not exceeding the licensed resident bed capacity of the RTF.

~~((9))~~ (11) Prior to issuing, renewing, or amending a license, the department shall:

(a) Review and approve the licensing application;

(b) Review and approve RTF policies and procedures according to this chapter, as applicable;

(c) Verify compliance with RTF construction standards according to this chapter, as applicable;

(d) Obtain written verification of compliance with RCW 71.12.485 and chapter 212-12 WAC administered by the Washington state patrol fire marshal fire protection service, as applicable; and

(e) Determine whether the applicant or licensee meets the requirements in chapter 71.12 RCW and this chapter.

~~((10))~~ (12) The department may issue a single RTF license to include two or more buildings on the same campus if the applicant or licensee:

(a) Meets the licensure requirements of chapter 71.12 RCW and this chapter; and

(b) Operates the multiple buildings as a single integrated system with governance by a single authority or body over all staff and buildings.

~~((11))~~ (13) For the purposes of this section, "campus" means an area where all of the RTF's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the facility is located.

NEW SECTION

WAC 246-337-985 Licensing—Fee requirements for tribal attestations. (1) An Indian health care provider as defined in RCW 71.24.025 may attest that its residential treatment facility meets state minimum standards for a licensed residential treatment facility, as described in RCW 71.12.460.

(2) A tribe that is pursuing attestation with the department must submit an administrative processing fee to the department for any new, renewed, or amended attestation as specified in WAC 246-341-0367.

(3) Tribal attestations are renewed every three years from the date of signature by all parties.

AMENDATORY SECTION (Amending WSR 21-12-042, filed 5/25/21, effective 7/1/21)

WAC 246-341-0367 Agency licensure and certification—Fee requirements for tribal attestations. (1) (~~(A tribe may attest that its behavioral health agency meets)~~) An Indian health care provider as defined in RCW 71.24.025 may attest to meeting state minimum standards for a licensed or certified behavioral health agency, as described by the definition of "licensed or certified behavioral health agency" in RCW 71.24.025.

(2) A tribe that is pursuing attestation with the department must submit (~~(a two hundred sixty-one dollar)~~) an administrative processing fee to the department for ((any new or renewed)) each new, renewed, or amended attestation of \$130 plus \$131 for each behavioral health agency, residential treatment facility, and behavioral health hospital license issued under the attestation.