



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

July 2021

To Whom It May Concern,

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). Over the last three years, 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.

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 2019) and SHB 2883 (chapter 185, Laws of 2020).

This rule change 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. Additionally, the rule changes 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 worked with partners and participants to 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. With this WAC revision, the department has reduced the existing rules by 40 percent.

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. The department held weekly rules workshops over four months in the summer and autumn of 2020 that were open to all partners and interested parties where every section in this WAC chapter was researched and scrutinized.

This revised rule represents the 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.

Changes between the proposed rule and final rule

The adopted rule is different from the text of the rule proposed as WSR 21-04-132. The changes were made in response to the comments received on the rule. The table, below, explains the specific reason for each change:

Change made	Reason
<p>Chapter Title: Behavioral Health <u>Agency</u> Licensing and Certification Requirements</p>	<p>This change makes it clear that this chapter applies specifically to Behavioral Health Agencies</p>
<p>WAC 246-341-0110(p) <u>(p) Recovery support: Applied behavior analysis (ABA) mental health services;</u></p>	<p>This is an editing change. List item (p) ABA services was unintentionally deleted from the list of available certifications in the proposed rule and it needs to remain on the list.</p>
<p>WAC 246-341-0300 (8) (a) and (b) (8) Granting a license. A new or amended license or service-specific certification will not be granted to an agency until: (a) All of the applicable notification and application requirements of this section are met; <u>and</u> (b) The department has reviewed and approved the policies and procedures for initial licensure or addition of new services <u>that demonstrate that the agency will operate in compliance with the licensure and service-specific certification standards.</u> (c) The department has conducted a review of any new main site or branch site locations and the agency corrects any noted deficiencies from those reviews within the agreed upon time frame; and (d) The department determines the agency is in compliance with the licensure and service-specific certification standards.</p>	<p>This change was made to address comments 5, 6, and 7 in the table below. The comments revealed that the department’s proposed draft was not clear on when an agency would need to be inspected, so the department edited the language to better reflect the intent of the rule.</p>

<p>WAC 246-341-0310 (2)</p> <p>To implement deemed status when opening a new main site agency, adding a new <u>type of service</u> to a main site agency, or adding a new <u>type of service</u> to a branch site location that is not currently offered at the main site agency, an agency must:</p> <p>(a) Submit proof of accreditation for the services provided by the agency to the department; and</p> <p>(b) Complete a department post-licensure <u>initial on-site</u> review.</p>	<p>This change was made to address comment 5 in the table, below. The comment revealed that the department’s proposed draft was not clear on when a deemed agency would need to be inspected, so the department edited the language to better reflect the intent of the rule.</p>
<p>WAC 246-341-0320 Agency licensure and certification –On-site reviews and plans of correction.</p> <p>To obtain and maintain a department-issued license and to continue to provide department-certified behavioral health services, each Each agency is subject to an <u>initial</u> on-site review and <u>each agency that is not deemed in accordance with WAC 246-341-0310 is subject to routine, ongoing on-site reviews</u> to determine if the agency is in compliance with the minimum licensure and certification standards.</p>	<p>This change was made to address comments 5, 6, and 7 in the table, below. The comments revealed that the department’s proposed draft was not clear on when an agency would need to be inspected, so the department edited the language to better reflect the intent of the rule.</p>

Category: Comments and recommendations

The following table summarizes all comments the department received on these rules.

WAC Section	Comment Received	Department of Health Response
<p>1. Overall WAC project</p>	<p>We are especially keen to work with the department to align the behavioral health agency regulations with other facility regulations, such as those governing hospitals. As entities with multiple licenses, hospitals face significant oversight that often results in duplicative oversight and regulation and creates confusing and potentially competing obligations related to the same operations and events. This is the opposite of everyone’s shared goal to increase flexibility, reduce burden and focus on care delivery.</p>	<p>Currently, hospitals, residential treatment facilities, and behavioral health agencies are licensed under separate statutes and rules. The department recognizes the challenges this poses including regulatory burden and places of duplication and inconsistency. As part of a multi-phase policy making process the department intends to work with interested parties and partners to address this issue in the near future.</p>
<p>2. Overall WAC project</p>	<p>We look forward to seeing how the rules are interpreted during licensing reviews and are hopeful that the final rules will result in fewer documentation burdens for behavioral health agencies providing medically necessary behavioral health treatment and services.</p>	<p>The department aims to create consistency in the survey process and policy interpretation. In order to achieve this, it is our intent to develop and publish a policy guide that can be</p>

WAC Section	Comment Received	Department of Health Response
	<p>We ask the department to assure that the spirit of the rewritten rules is reflected in its survey and oversight practices. Many of the changes in the rewritten rules contemplate agency flexibility and discretion. As we all agree, these are crucial principles to providing behavioral health services in an everchanging legislative landscape and that our collective workforce challenges and limitations call for.</p> <p>Clear guidance for department staff about operationalizing many of the flexibilities incorporated into the new regulations will be required to ensure there are no inconsistent survey practices placed on facilities who operate responsibly and in keeping with the Department’s modernized regulatory model</p>	<p>used by agencies and guide department staff in applying regulations consistently and in line with the intent of the modernized rules.</p>
<p>3. Overall WAC project</p>	<p>I believe that community behavioral health providers have been handed a job to do, along with coming up with ways to do it, that is going to require things from them that I, as a receiver of their services (for my severely mentally ill son) believe that they will not be able to accomplish unless the state provides the necessary support and resources they are going to need to do that job; and once that support is given and with the providers believing that the state means it, the state will then do more affirmative compliance checking rather than waiting for complaints to surface that will elicit the need to then take some consequential action toward providers who have not been complying with the rules. This especially in the case of attempting to provide the needed supports and programs for the severely mentally ill who would have ordinarily been sent to Eastern or Western State Hospital for care and treatment - now not available anywhere except in communities.</p>	<p>By modernizing rules the department aims to reduce regulatory burden while setting and maintaining quality and safety standards. By finding an appropriate balance of regulation, behavioral health agencies will be supported in their ability to offer services and improve access to quality, effective and safe care and treatment.</p>
<p>4. WAC 246-341-0300 Agency licensure and certification – General information</p>	<p>We think it makes a lot of sense to consolidate the multiple rules related to agency licensure into a single WAC. And while the change allowing a single agency license when services are provided in multiple buildings is a very helpful step to a more efficient licensure</p>	<p>In order to make this change it will take additional coordination with other state agencies and partners to address payment system and data collection issues. As part of our multi-</p>

WAC Section	Comment Received	Department of Health Response
	<p>process, we also encourage the department to continue exploring ways to include branch sites under a single license, which would allow the department to issue a single plan of correction.</p>	<p>phase rulemaking project the department will be working with interested parties to streamline licensure and certification. This topic will fit well into those discussions.</p>
<p>5. WAC 246-341-0310 Deeming</p>	<p>We are pleased to see some of the changes made to the deeming definition and to WAC 246-341-0310. For years, our member agencies have expressed concerns that the state’s recognition of deemed behavioral health agencies doesn’t result in any relief from regulatory burden, despite the statutory intent of RCW 71.24.037. The language changes made to the deeming WAC in the draft rules (e.g., changing “to be considered for deeming” to “to implement deemed status”) will hopefully provide long-needed clarity to both behavioral health agencies and department staff conducting licensing reviews.</p> <p>That said, we have some concerns about requiring a post-licensure onsite review by the department for agencies to implement deemed status when adding a new main site or new service. National accreditation organizations do rigorous onsite surveys as part of the accreditation process and quality improvement. The accreditation status is the agency’s demonstration that it is complying with policies and standards, so we don’t quite understand why the department would need to do a second review. If deemed status is going to mean anything and result in more beneficial regulatory relief, once an agency is deemed, the department should not be doing site reviews unless there is a complaint.</p>	<p>In an effort to decrease the regulatory burden for deemed agencies the proposed rules would limit the requirement for a single, initial onsite review to new main site agencies or when a new type of service that was not previously deemed is added to a main site agency or branch site location. It eliminates the current practice of also doing onsite reviews of new branch site locations that fall under a deemed main site location.</p> <p>The single, initial onsite review is used to confirm that the agency has met the minimum licensing and certification standards. The department does not review the deemed agency again unless necessary to conduct a complaint investigation.</p> <p>The department has made clarifying edits to WAC 246-341-0310 and 246-341-0320 to better reflect the intent of the rule.</p> <p>Additional policy work regarding deeming will be conducted in the upcoming rulemaking phases.</p>
<p>6. Repealed 246-341-0325 and WAC 246-341-0300 Agency licensure and certification – General information</p>	<p>It appears the requirement for onsite reviews upon initial licensure has been removed. We do have some concerns about removing that requirement entirely. New providers (that are not deemed) should have to demonstrate that their policies and procedures reflect what’s</p>	<p>Onsite reviews are a requirement in WAC 246-341-0320. The department does not require an onsite review prior to a license being issued because the agency is unable to demonstrate compliance with the licensing and certifications standards until they are</p>

WAC Section	Comment Received	Department of Health Response
	<p>occurring at the agency, so an initial onsite review seems appropriate.</p>	<p>serving clients. Based on this comment, the comment above and the comment below, the department has made clarifying edits to WAC 246-341-0320 to capture the intent of the rule and current practice.</p>
<p>7. WAC 246-341-0320 On-Site Reviews and Plans of Correction</p>	<p>First, we really appreciate the addition of subsection (5). Allowing on-site reviews of branch sites to take place at the same time as the main site review and take place at the main site location will make a great difference in the time and number of staff who prepare for licensing reviews.</p> <p>However, there is also language in this WAC that causes some confusion: “<u>To obtain and maintain a department-issued license, . . . each agency is subject to an on-site review to determine if the agency is in compliance with the minimum licensure and certification standards.</u>” It seems that this WAC requires an on-site review to obtain an agency license, even though that requirement was removed from WAC 246-341-0300.</p> <p>Again, we do think an initial onsite review is important to conduct for new providers that are not deemed. In fact, we’re struggling to understand why new provider agencies are not required to have an initial on-site site review by the department, yet agencies that have been deemed are subject to one</p>	<p>The department agrees that this language is confusing. An on-site review is currently not required before a license can be issued; however, in order for the department to confirm that a new agency is meeting minimum licensing standards in order to maintain their newly issued state license the department conducts an initial onsite review after the license has been issued. Additionally, ongoing, routine reviews are required for non-deemed agencies to maintain their license.</p> <p>The department has amended WAC 246-341-0320 to capture the intent of the rule and current process.</p>
<p>8. WAC 246-341-0420 (13) Agency policies and procedures.</p>	<p>We would like the rules to require reporting adverse events 48 hours after confirming an adverse event rather than 48 hours after the actual event. We request adding:</p> <p>(13) Reporting critical incidents. A description of how the agency directs staff to report to the department within forty-eight hours any critical incident that occurs involving an individual, and actions taken as a result of the incident. <u>Provided that a critical incident which is also an adverse event under Chapter 346-02 shall be reported under the timelines established in WAC 346-02- 020.</u></p>	<p>The department is unable to make this recommended change at this time. The department recognizes the there is a difference between reporting an event within 48-hours and within 48-hours of “confirmation” of the event. The intent of adverse event reporting is for non-regulatory data collection. The intent of critical incident reporting is to allow the department to investigate the incident, if necessary, to protect the safety of individuals. Because of the difference in the intent</p>

WAC Section	Comment Received	Department of Health Response
		and the potential need for the department to take quick action, the critical incident reporting timeline did not allow for additional time to confirm the event.
WAC 246-341-0515 Personnel—Agency staff requirements	Sub (3) refers to all staff providing mental health services having access to supervision & clinical support. We'd suggest broadening this phrase – clinical professionals providing substance use disorder services. We suggest adding: Each agency must ensure that all of the following staff requirements are met: (1) All clinical staff are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement. (2) All clinical staff receive clinical supervision; (3) All clinical staff providing <u>behavioral mental health services have access to consultation with a psychiatrist, physician, physician assistant, advanced registered nurse practitioner (ARNP), or psychologist who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder</u> <u>professional person with the appropriate credential and appropriate experience of at least one year in the direct treatment of individuals with a behavioral health disorder.</u>	The department is unable to make this recommended change at this time. The department appreciates this idea, but has concern that broadening the language may potentially impact staffing requirements for agencies. Before making this change the department would want to make sure we had additional stakeholder input.
WAC 246-341-0640 Clinical Record Requirements	E2SHB 1819 from 2017 required the department of social and health services to reduce the amount of paperwork required by this WAC chapter. In this WAC revision there was not a significant reduction in clinical record content. Doing this would improve recruitment and retention so there's better access to care.	DSHS and DOH have taken significant steps to reduce many administrative burdens such as required documentation on assessments. We need to be careful not to eliminate all documentation requirements; this would be very difficult for the department to regulate – a facility needs to be able to demonstrate compliance in some way. We acknowledge that paperwork is burdensome and we will continue to work on removing any excess administrative burden that we can

WAC Section	Comment Received	Department of Health Response
		through the next rule phases as well as considering other ways a facility can demonstrate compliance. Many reporting requirements come from other entities – Managed Care Organizations, Medicaid requirements, etc. We are happy to participate in discussions with other entities towards this end.

Category: Appreciation and thanks

This table summarizes comments that were made in support of the rule.

WAC Section	Comment Received
Overall WAC project	Overall, we are pleased with the draft rules. They are more streamlined, clearer, and easier to read. We very much appreciate the collaborative process by the Department of Health to heavily stakeholder this significant rewrite and to include feedback in along the way
Overall WAC project	Thank you for all of your hard work these past couple of years and your determination to get the behavioral health agency WACs to a better place.
Overall WAC project	A great appreciation to DOH overall for this process - and allowing me, as a family member to participate - I was not expecting to testify but am pleased to have been provided the opportunity to do so - and to be able to say what I wanted to say
Overall WAC project	You truly listened and heard providers and made adjustments that showed you were sincerely looking for improvements. That kept participants engaged and attentive.
Overall WAC project	I commend the DOH process; it was a collaborative stakeholder process – the new WAC is going to be a significant improvement that will streamline the regulatory process
Overall WAC project	I wanted to thank you all for this process. Extensive and inclusive. Having been in previous process with these WACs, this round was much improved in so many ways – I have a couple of thank yous for clarification in the changes. Appreciation for clarification around clinical supervision. Those apply to trainees, interns, volunteers and students. That made a huge difference for us. Also, providing clarity around outpatient services for level 2 outpatient substance use disorder services, separating out what those services are in terms of intensity versus deferred prosecution cases.
WAC 246-341-0310 Deeming	We are pleased to see some of the changes made to the deeming definition and to WAC 246-341-0310. For years, our member agencies have expressed concerns that the state’s recognition of deemed behavioral health agencies doesn’t result in any relief from regulatory burden, despite the statutory intent of RCW 71.24.037. The language changes made to the deeming WAC in the draft rules (e.g., changing “to be considered for deeming” to “to implement deemed status”) will hopefully provide long-needed clarity to both BHAs and department staff conducting licensing reviews.

WAC Section	Comment Received
WAC 246-341-0342 Off-Site locations	We appreciate you including some of our previous feedback in the latest revision of WAC 246-341-0342 and distinguishing between an “established off-site location” and an “off-site” location. The additional language that only locations where services are provided “on a regularly scheduled ongoing basis” need to be maintained on a list will reduce some documentation burden.
WAC 246-341-0515 Personnel – Agency Staff Requirements	We’re so pleased to see WAC 246-341-0515 amended so that behavioral health agencies use co-occurring disorder specialists to provide the substance use disorder services for which they are credentialed. We also think the new definition for “mental health professional” is great in that it streamlines which individuals automatically qualify without the need for department designation or agency attestation and those individuals that do. At the same time, the new definition retains the flexibility so needed in behavioral health agencies where the workforce is comprised of a range of different licenses and credentials.
WAC 246-341-0640 Clinical Record Content	WAC 246-341-0640 is another excellent example of streamlining and combining several WACs into one. We also recognize how challenging it was to determine what minimum standards should be included in this rule. While we’re still not quite sure why it’s necessary for the state to be so prescriptive about what must be included in a behavioral health agency’s individual service plan or progress notes, we very much appreciate your commitment to reducing the number of boxes that need to be checked on a clinical assessment. That section is a vast improvement, and I look forward to checking in on our membership to see the difference in patient engagement once they can focus on the presenting issue and other essential concerns rather than ensuring they have checked off all the questions in the WAC. Lastly, we appreciate the explicit clarification made in WAC 246-341-0900 that agencies providing crisis services do not need to meet the clinical record content requirements.
WAC 246-341-0740 Outpatient services— Level two intensive outpatient substance use disorder services.	Thank you for clarifying that deferred prosecution requirements do not apply to all agencies providing Level 2 intensive outpatient substance use disorder.
WAC 246-341-0754 Problem Gambling and Gambling Disorder	Thank you for all of the work. I hadn’t engaged in this process before. Painless and interesting and effective.

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

Julie Tomaro
Facilities Program Manager