



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: January 02, 2018

TIME: 3:57 PM

WSR 18-02-088

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-11-029 ; 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) WAC 182-531A-0800, Applied behavior analysis (ABA) – Provider requirements

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 6, 2018	10:00 AM	Health Care Authority Cherry Street Plaza Sue Crystal Room 106A 626 8 th Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than February 7, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: arc@hca.wa.gov

Fax: (360) 586-9727

Other:

By (date) February 6, 2018

Assistance for persons with disabilities:

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: (800) 848-5429 or 711

Email: amber.lougheed@hca.wa.gov

Other:

By (date) February 2, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is revising WAC 182-531A-0800, Applied behavior analysis (ABA) - Provider requirements, to align with new credentialing for Applied Behavioral Analysis providers through the Washington State Department of Health (DOH) under Chapter 246-805 WAC. The agency added requirements for providers to be recognized by the agency as centers of excellence (COEs).

Reasons supporting proposal: The new credentialing requirements for ABA providers are required under Substitute Senate Bill (SSB) 5488 of 2015. The information regarding COEs is being added to clarify requirements.

Statutory authority for adoption: RCW 41.05.021, 41.05.160, SSB5488, 64th Legislature, 2015 Regular Session

Statute being implemented: RCW 41.05.021, 41.05.160, 64th Legislature, 2015 Regular Session

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: (person or organization) Health Care Authority

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Katie Pounds	PO Box 42716, Olympia, WA 98504-2716	360-725-1346
Implementation:	Rebecca Peters	PO Box 45530, Olympia, WA 98504-5530	360-725-1194
Enforcement:	Rebecca Peters	PO Box 45530, Olympia, WA 98504-5530	360-725-1194

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: RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- 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 ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If 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 analysis showing how costs were calculated. The agency determined that these rules do not impose more-than-minor costs on businesses. Most of the new rules are being revised to comply with legislative requirements and align with DOH credentialing requirements. The training and form requirements for centers of excellence (COEs) do not impose more than a minor cost to businesses. The required training applies to certain physicians and advanced registered nurse practitioners (one employee per COE) and is provided at no cost and in several locations.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert 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: January 2, 2018	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Center of excellence.

(1) A center of excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team.

(2) The COE must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

(i) An advanced registered nurse practitioner (ARNP);

(ii) A developmental pediatrician;

(iii) A neurologist;

(iv) A pediatric neurologist;

(v) A pediatric psychiatrist;

(vi) A psychiatrist; or

(vii) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (3) of this section ~~((and))~~, who has been designated by the agency as a COE, and who has successfully completed the agency's approved COE training.

(3) The COE must be prequalified by the agency as meeting or employing people who meet the following criteria:

(a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:

(i) Using a validated diagnostic tool;

(ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or

(iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(4) To be recognized as a COE by the agency, the provider must submit a signed COE Attestation form, HCA 13-009, to the agency.

(5) The COE must be enrolled with the agency or the client's managed care organization(~~(, unless the client has third party insurance)~~) to be reimbursed for services.

~~((5))~~ (6) Examples of providers who can qualify as a designated COE include:

(a) Multidisciplinary clinics;

(b) Individual qualified provider offices; and

(c) Neurodevelopmental centers.

~~((6))~~ (7) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

~~((7))~~ (8) The lead behavior analysis therapist (LBAT) must ~~((be))~~:

(a) Be licensed by the department of health (DOH) to practice independently as ((an ARNP, physician, psychologist, or licensed mental health practitioner under Title 18 RCW, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW,)) a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or

(b) ~~((Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as an ARNP, physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW, and be an eligible provider according to chapter 182-502 WAC; or~~

~~(c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC)). Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-008, regarding certification as a board-certified behavior analyst (BCBA) or a board-certified assistant behavior analyst (BCaBA) on file with the agency.~~

~~((8))~~ (9) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

(a) ~~A ((board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB)) DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or~~

(b) ~~((Eligible to sit for board certification under standards set by the BACB; or~~

~~(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB)) A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).~~

~~((9))~~ (10) If the LBAT's role is filled by a ((BCaBA)) LABA, the responsibilities below must be fulfilled by both the ((BCaBA)) LABA and the supervising ((BCBA)) LBA or licensed psychologist, as required by ((the BACB)) DOH under chapter 246-805 WAC. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the ((therapy assistant)) certified behavior technician per week.

~~((Therapy assistant.~~

~~(10) The therapy assistant (TA) must be:~~

~~(a) Able to practice independently by being licensed)) Certified behavior technician.~~

(11) The certified behavior technician (CBT) must:

~~(a) Be certified by DOH as a ((licensed mental health practitioner or credentialed as a counselor)) CBT under ((Title 18)) chapter 18.380 RCW in good standing with no license restrictions; or~~

~~(b) ((Employed by or contracted with an agency enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or~~

~~(c) Employed by or contracted with an agency enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;~~

~~(11)) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced clinical social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency.~~

(12) The ((TA)) CBT must enroll as a ((performing or)) servicing provider ((and have:

~~(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a client with core symptoms of autism; and~~

~~(b) A letter of attestation signed by the lead LBAT, documenting that the ((TA)) CBT has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services.~~

~~(12)) under chapter 182-502 WAC.~~

(13) The ((TA)) CBT must:

~~(a) Deliver services according to the ABA therapy treatment plan; ((and))~~

~~(b) Be supervised by ((an LBAT)) a DOH-licensed professional who meets the requirements under ((subsection (7), (8), and (9) of this section)) WAC 246-805-330; and~~

~~(c) Review the client's progress with the ((LBAT)) supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the ((LBAT)) supervisor.~~

Facility-based day program.

~~((13)) (14) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following ((licensure)) requirements:~~

~~(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;~~

~~(b) ((A clinic or nonhospital based facility must be licensed as a community mental health agency by DBHR under chapter 388-877A WAC;~~

~~(c) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable; ((and~~

~~(d)) (c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW; and~~

(d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.