



# RULE-MAKING ORDER EMERGENCY RULE ONLY

## CR-103E (August 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: December 29, 2017

TIME: 1:42 PM

WSR 18-02-063

**Agency:** Health Care Authority, Washington Apple Health

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.  
 Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** 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 under Chapter 246-805 WAC.

**Citation of rules affected by this order:**

New:  
Repealed:  
Amended: 182-531A-0800  
Suspended:

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160, Substitute Senate Bill 5488, Chapter 118, Laws of 2015, 64<sup>th</sup> Legislature

**Other authority:**

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this finding:** WAC 182-531A-0800 needs to be amended to align with Substitute Senate Bill 5488 of 2015 and Washington State Department of Health's recently filed rules under chapter 246-805 WAC, which create new credentials for behavior analysts, assistant behavior analysts, and behavior technicians, effective July 1, 2017. As soon as chapter 246-805 WAC became effective, the agency began the permanent rulemaking process under WSR 17-11-029 filed May 10, 2017. The agency has completed the external stakeholder review and plans to file the CR-102 once the agency responds to all stakeholder comments. This emergency filing is necessary to continue the current emergency rule until the rulemaking process is completed.

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>1</u>	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**


Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

**Date adopted:** December 29, 2017

**Name:** Wendy Barcus

**Title:** HCA Rules Coordinator

**Signature:**



**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) The COE must be enrolled with the agency or the client's managed care organization, unless the client has third-party insurance.

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

(a) Multidisciplinary clinics;

(b) Individual qualified provider offices; and

(c) Neurodevelopmental centers.

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

**Lead behavior analysis therapist.**

(7) 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)) a behavior analyst or assistant behavior analyst with supervision from a licensed behavior analyst~~ under Title 18

RCW(~~(, or credentialed as a certified counselor or certified counselor advisor under Title 18 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 psychologist with a signed attestation regarding certification as a board-certified behavior analyst (BCBA) or an assistant behavior analyst (BCaBA) on file with the agency (see chapter 246-805 WAC).

(8) The LBAT must enroll as a servicing provider, 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 WAC 246-805-100); 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 WAC 246-805-200).

(9) 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, as required by ~~((the BACB))~~ DOH. 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.))~~ Certified behavior technician.**

(10) The ~~((therapy assistant (TA))~~) certified behavior technician (CBT) must ~~((be))~~:

(a) Be able to practice independently by being ((licensed)) certified by DOH as a ~~((licensed mental health practitioner or credentialed as a counselor))~~ certified behavior technician under Title 18 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 prac-~~

~~itioner 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;)) 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 psychologist with a signed attestation regarding ABA qualifications on file with the agency (see chapter 246-805 WAC).~~

(11) The ((FA)) 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 ((FA)) CBT has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services.

(12) The ((FA)) CBT must:

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

(b) Be supervised by an LBAT who meets the requirements under subsection (7)((7)) and (8)((7 and (9))) of this section; and

(c) Review the client's progress with the LBAT 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.

#### **Facility-based day program.**

(13) 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;

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

~~(e))) A provider rendering direct ABA services 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.~~