

Significant Legislative Rule Analysis

WAC 246-840-030 & WAC
246-840-090

A Rule Clarifying Licensing
Requirements for
Registered Nurse (RN) and
Licensed Practical Nurse
(LPN) Out-of-state
Applicants



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SECTION 1

A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed.

Description/ Current Situation: The Washington State Board of Nursing (board), formerly known as the Nursing Care Quality Assurance Commission, is proposing to amend WAC 246-840-030 and WAC 246-840-090 to clarify specific licensing requirements for registered nurse (RN) and licensed practical nurse (LPN) applicants.

The proposal amends licensing requirements for RN and LPN applicants applying for initial licensure via an out-of-state traditional nursing education program approved by another U.S. nursing board, and applicants applying via interstate endorsement.

The board became aware that certain nursing programs in Florida and elsewhere had fraudulent programs. Nursing students from the suspect schools did not meet the minimum requirements of nursing education. Transcripts from the schools failed to reflect minimum requirements of nursing programs and appeared to have been altered.

Although those applicants failed to prove qualifications for licensure in Washington, individuals believed that because another state approved their fraudulent nursing program, the board must accept that the nurse applicant was qualified and license these RN and LPN applicants.

History: Board licensing staff identified school transcripts that did not appear authentic. This led to a more thorough investigation of licensees and the schools from which they received their degree. The board conducted a review of 2947 applicant files in 2022. The files represented RNs from 15 states. There were 144 RN licensees who reported degree completion from one of the suspected fraudulent schools. A total of 4.9 percent of licensees from 15 states reportedly received their degree from a fraudulent school. The state of Florida had a 12.7% incidence out of the 2947 files reviewed (127 of 144 reported) which may have skewed the overall percentage. Excluding Florida, the percentage of licensees reporting attendance at a fraudulent school was 0.9%.

After thoroughly investigating each case, the board took action to rescind RN licenses from those who received their education at fraudulent schools. They denied licensure to others who were in the application process. When RN licensees challenged the board, the Department of Health's Health Law Judge upheld the board's action. The board decided to amend rule language to clarify that the board can determine if an applicant's education is insufficient, regardless of whether the school was approved by another state.

On May 5, 2023, the board filed emergency rules to amend WAC 246-840-030 and 246-840-090, initial licensure and endorsement as WSR 23-11-0153. The emergency rules were extended on September 1, 2023 as WSR 23-18-064. The amendments clarify that RN and LPN applicants applying by interstate endorsement or for initial licensure educated in a traditional nursing

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education program approved by another U.S. nursing board, must successfully complete a nursing education program in another U.S. state. The program must be approved by the nursing board in that state and substantially meet requirements for approved nursing education in Washington state. The emergency rule clarifies licensing requirements for RN and LPN applicants and affirms the board's authority to evaluate and determine the sufficiency of academic preparation for all applicants.

Why: The board must protect the people of Washington by licensing only qualified, properly trained nurses. The board is proposing to amend these rules to clarify that it is within board authority to determine which programs are substantially equivalent to Washington state and to ensure that only programs that meet Washington state standards are accepted. The rules must be changed to ensure they cannot be interpreted to mean a fraudulent nursing program or program not meeting Washington state standards approved by another state must be accepted as qualifying RNs and LPNs for licensure in Washington state.

SECTION 2

Significant Analysis Requirement

Yes. The proposed rule changes to WAC 246-840-030 and 246-840-090 require significant analysis as defined in RCW 34.05.328(5)(c)(iii)(B) because they establish, alter, or revoke any qualification or standard for the issuance, suspension, or revocation of a license or permit.

SECTION 3

Goals and objectives of the statute that the rule implements.

RCW 18.79.010 provides the overarching goal that the board must regulate the competency and quality of professional healthcare providers under the board's jurisdiction by establishing, monitoring, and enforcing qualifications for licensure, nursing practice, continuing competency, and discipline.

RCW 18.79.110 (2) gives the board the authority to approve schools of nursing and nursing programs.

RCW 18.79.110 (4) gives the board clear authority to adopt rules necessary to fulfill the purposes of chapter 18.79 RCW.

The board is required by RCW 18.79.110 (4) to adopt such rules under chapter 34.05 RCW as are necessary to fulfill the purposes of this chapter. The purpose of the chapter as defined in RCW 18.79.010 is to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline. Rules, policies, and procedures developed by the board must promote the delivery of quality health care to the residents of the state of Washington.

RCW 18.80.020 gives the board authority to approve multistate licenses to practice for registered or licensed practical or vocational nursing issued by a home state to a resident in that state if the education program is comparable to a licensing board-approved prelicensure education program. The home state of the RN or LPN must be a participant in the National Council of State Boards of Nursing (NCSBN) compact which the Washington State Board of Nursing joined in 2023.

SECTION 4

Explanation of why the rule is needed to achieve the goals and objectives of the statute, including alternatives to rulemaking and consequences of not adopting the proposed rule.

The proposed amendments to WAC 246-840-030 and WAC 246-840-090 meet the intent of the underlying statutes by creating permanent rules.

The consequences of not adopting the changes may mean the current rule language could continue to be interpreted that another state's nursing board can "approve" programs for Washington state licensure. This could result in a fraudulent nursing program approved by another state or a program that does not meet Washington state standards, must be accepted as qualifying RNs and LPNs for licensure in Washington state.

The board works to adopt licensing standards that protect both the providers and the clients and patients. The board's role is to protect the people of Washington by only licensing qualified, properly trained nurses. The board has adopted temporary emergency rules to ensure properly trained nurses are licensed. The proposed rule reflects the standards currently adopted in the emergency rules. Rulemaking is necessary to address the problem and ensure enforceable standards.

SECTION 5

Analysis of the probable costs and benefits (both qualitative and quantitative) of the proposed rule being implemented, including the determination that the probable benefits are greater than the probable costs.

WAC 246-840-030 Initial licensure for registered nurses and practical nurses—Out-of-state traditional nursing education program approved by another United States nursing board.

Description: Prior to the effective date of the emergency rules on May 24, 2023, the rules stated RNs and LPNs applying for initial licensure must successfully complete a board approved nursing education program. There was no further qualifying language. The emergency rules and the proposed permanent rules clarify that the board approves which out-of-state nursing schools and programs meet the requirements of Washington state and therefore are substantially equivalent. Other clarifying amendments are also proposed for readability without changing the existing requirements.

Cost: There are no anticipated costs to comply with this proposed rule for out-of-state RNs and LPNs seeking licensure who have received their education and training from a program approved by another United State’s (U.S.) nursing board. The proposed rule amendments clarify that the board approves which out-of-state nursing schools and programs meet the requirements of Washington State standards. RCW 18.79.110 gives the board the authority to approve such schools. The existing rule acknowledges that nursing programs in other U.S. states may be substantially equivalent to Washington State programs and therefore upon completion may qualify an applicant for licensure. The board has always made the determination of substantially equivalent. The proposed rule clarifies the role of the board.

Benefit: The proposed rule will help to ensure the quality of nursing professionals. The proposed amendments meet the board’s overall mission of protecting the public’s safety by ensuring all nursing professionals licensed in Washington are properly educated.

WAC 246-840-090 Licensure for nurses by interstate endorsement.

Description: Prior to the effective date of the emergency rules on May 24, 2023, the rules stated RNs and LPNs applying for interstate endorsement could be issued a license without examination provided the applicant graduated and held a degree from a state approved program preparing candidates for licensure as a nurse. There was no further qualifying language. The emergency rules and the proposed permanent rules clarify that the board approves which programs meet the requirements of Washington state and therefore are

substantially equivalent. Other clarifying amendments are also proposed for readability without changing the existing requirements.

Cost: There are no anticipated costs to comply with this proposed rule for out-of-state RNs and LPNs seeking licensure who have received their education and training from a school of nursing. The proposed rule amendments clarify that the board approves which out-of-state education and training programs meet the requirements of Washington State standards. RCW 18.79.110 gives the board the authority to approve such programs. The existing rule acknowledges that nursing programs in other U.S. states may be substantially equivalent to Washington State programs and therefore upon completion may qualify an applicant for licensure. The board has always made the determination of substantially equivalent. The proposed rule clarifies the role of the board.

Benefit: The proposed rules will help to ensure the quality of nursing professionals. The proposed amendments meet the board's overall mission of protecting the public's safety by ensuring all nursing professionals licensed in Washington are properly educated.

Determination

Probable Benefits greater than Probable Costs

The board determined there are no anticipated costs to comply with this proposed rule for out-of-state RNs and LPNs seeking licensure. The benefits of the proposed rule protect the public's safety by ensuring all nursing professionals licensed in Washington are properly educated. The benefits outweigh costs.

SECTION 6

List of alternative versions of the rule that were considered including the reason why the proposed rule is the least burdensome alternative for those that are required to comply and that will achieve the goals and objectives of the proposed rule.

The proposed version of the rule changes is the least burdensome to clarify the expectations of the Washington State Board of Nursing regarding application for initial licensure or licensure by interstate endorsement.

No alternative versions of the rule were considered since the emergency rule has been successfully used to deter unqualified nurses from practicing in Washington state.

SECTION 7

Determination that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The rule does not require those to whom it applies to take action that violates the requirements of federal or state law.

SECTION 8

Determination that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The rule does not impose more stringent performance requirements on private entities than on public entities.

SECTION 9

Determination if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The rule does not differ from any applicable federal regulation or statute.

SECTION 10

Demonstration that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

There are no other applicable laws.