



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: March 15, 2024

TIME: 1:44 PM

WSR 24-07-063

**Agency:** Department of Health – Washington State Board of Nursing

**Original Notice**

**Supplemental Notice to WSR**

**Continuance of WSR**

**Preproposal Statement of Inquiry was filed as WSR 23-17-074; 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): Substance use disorder monitoring program for nursing professions, amending WAC 246-840-750 through 246-840-780 and adding WAC 246-840-790. The Washington State Board of Nursing (board) proposes amendments and an addition to rules relating to the board's substance use disorder (SUD) monitoring program in response to Substitute House Bill (SHB) 1255 (chapter 141, Laws of 2023), Nursing — Substance Use Disorder Monitoring Program Participation, including application requirements for a stipend.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 10, 2024	1:15 PM	<p><b>Physical location:</b></p> <p>Department of Health Town Center 2, RM 166/167 111 Israel Rd S.E. Tumwater, WA 98501</p> <p><b>Virtual:</b></p> <p>Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone:</p> <p>Zoom Registration <a href="https://us02web.zoom.us/meeting/register/tZEpd--qqjwiGN2BgNYQ5aDscmprUsuLbfW">https://us02web.zoom.us/meeting/register/tZEpd--qqjwiGN2BgNYQ5aDscmprUsuLbfW</a></p>	The board will be holding a hybrid hearing. Participants may attend in person or virtually.

**Date of intended adoption:** 5/10/2024 (Note: This is NOT the effective date)

### Submit written comments to:

Name: Bonnie King

Address: PO Box 47864, Olympia, WA 98504-7864

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

Fax: None

### Assistance for persons with disabilities:

Contact: Bonnie King

Phone: 564- 669-9721

Fax: None

TTY: 711

Other: N/A  
By (date) 4/29/2024

Email: [WABONRules@doh.wa.gov](mailto:WABONRules@doh.wa.gov)  
Other: N/A  
By (date) 4/29/2024

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The board is proposing amendments to current rule sections to establish new definitions, to change “commission” to “board,” “abuse” to “use” and other changes relating to the board’s SUD monitoring and treatment program in response to SHB 1255.

The board is also proposing to create a new rule section establishing application requirements for a stipend to offset treatment costs, as directed by SHB 1255. The intent of the stipend program is to encourage initial participation and continuation in the board’s approved SUD monitoring program authorized by RCW 18.130.175. The proposed new rule mirrors the statutes eligibility requirements, and further defines the process the board will use to pay the out-of pocket expenses through the stipend program, clarifies what the board’s approved SUD program is as established in existing rules, and establishes eligibility requirements including defining what a “financial need” is.

**Reasons supporting proposal:** Cost can be a deterrent to participation in the board’s SUD program for treatment and recovery. SHB 1255, passed in the 2023 Legislative Session, provided general state funding for a stipend program that could defray up to 80 percent of the out-of-pocket expenses for nurses who establish a financial need. Rulemaking is necessary to carry out the Legislature’s directions as reflected in SHB 1255.

**Statutory authority for adoption:** RCW 18.79.010, 18.79.110, 18.130.175 and SHB 1255 (chapter 141, Laws of 2023) codified in RCW 18.79.440

**Statute being implemented:** SHB 1255 (chapter 141, Laws of 2023)

**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:** None

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Washington State Board of Nursing

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Bonnie King	111 Israel Road SE, Tumwater, WA 98504	564-669-9721
Implementation:	Grant Hulteen	111 Israel Road SE, Tumwater, WA 98504	360-280-6610
Enforcement:	Catherine Woodard	111 Israel Road SE, Tumwater, WA 98504	360-236-4757

**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: Bonnie King  
Address: PO Box 47864, Olympia, WA 98504-7864  
Phone: 564-669-9721  
Fax: 360-236-4738  
TTY: 711

Email: [WABONRules@doh.wa.gov](mailto:WABONRules@doh.wa.gov)

Other: N/A

No: Please explain:

### 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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations)         | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)  | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(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: All of the proposed rule changes apply to individual providers and do not affect small businesses. The following rule proposal, or portions of the proposal are exempt under RCW 34.05.310 (4)(d) - WAC 246-840-750, 246-840-760, 246-840-770, and 246-840-780. WAC 246-840-790 is exempt under RCW 34.05.310(4)(c).

#### (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:

**Signature:**

**Date:** 3/15/2024

**Name:** Alison Bradywood, DNP, MH/MPH, RN, NEA-BC

**Title:** Executive Director, Washington State Board of Nursing

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line that loops back to the left.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

**WAC 246-840-750 Philosophy governing voluntary substance ((abuse)) use monitoring programs.** The ~~((nursing care quality assurance commission (commission)))~~ Washington state board of nursing (board) recognizes the need to establish a means of providing early recognition and treatment options for licensed practical nurses or registered nurses whose competency may be impaired due to the ~~((abuse))~~ use of drugs or alcohol. The ~~((commission))~~ board intends that such nurses be treated, and their treatment monitored so that they can return to or continue to practice their profession in a manner, that safeguards the public. The Washington health professional services (WHPS) program is the ~~((commission's))~~ board's approved substance ~~((abuse))~~ use monitoring program under RCW 18.130.175. The ~~((commission))~~ board may refer licensed practical nurses or registered nurses to WHPS as either an alternative to or in connection with disciplinary actions under RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

**WAC 246-840-760 Definitions of terms used in WAC 246-840-750 through ~~((246-840-780))~~ 246-840-790.** The definitions in this section apply throughout WAC 246-840-750 through ~~((246-840-780))~~ 246-840-790 unless the text clearly requires otherwise.

~~((1))~~ ~~((("Approved treatment facility" is a facility certified by the division of behavioral health and recovery (DBHR) department of social and health services, according to chapters 388-877 through 388-877B WAC that meets the defined standards. Drug and alcohol treatment facilities located out-of-state must have substantially equivalent standards.~~

~~((2))~~ "Continuing care" means the phase of treatment following acute treatment. Common elements of continuing care include relapse prevention and self-help group participation.

~~((3))~~ (2) "Defray" means the board may pay up to 80 percent of out-of-pocket expenses related to WHPS program participation that includes substance use disorder (SUD) evaluations, SUD treatment and other ancillary services including drug testing, participation, professional peer support groups, and any other expenses deemed appropriate by the board.

(3) "Financial assistance" means board approval to use funds to pay for a participant's out-of-pocket costs associated with participation in the WHPS program.

(4) "Financial need" means a demonstrated need by a WHPS participant when they need help to pay for costs related to participation in the WHPS program.

(5) "Monitoring contract" is a comprehensive, structured agreement between the recovering nurse and WHPS defining the requirements of the nurse's program participation.

~~((4))~~ (6) "Peer support group" is a professionally facilitated support group designed to support recovery and re-entry into practice.

((+5)) (7) "Random drug screens" means laboratory tests to detect the presence of drugs ((of-abuse)) in body fluids and other biologic specimens that are performed at irregular intervals not known in advance by the person to be tested.

((+6)) (8) "Referral contract" is a formal agreement between the ((commission)) board and the nurse to comply with the requirements of the WHPS program in lieu of discipline.

((+7)) (9) "Self-help groups" means groups or fellowships providing support for people with substance use disorder to support their sobriety and recovery.

((+8) "~~Substance abuse~~" or) (10) "Stipend program" means the board program to defray the out-of-pocket expenses for participants who have applied for and been approved to receive financial assistance in connection with participation in WHPS. The purpose is to assist nurses who would otherwise be unable to participate in the program because of personal financial limitations.

(11) "Stipend program application" means a board form that the participant uses to request stipend assistance that provides information to determine eligibility for stipend funds.

(12) "Substance use disorder" (SUD) means a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the registrant/licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

((+9)) (13) "Washington health professional services (WHPS)" is the approved substance ((abuse)) use monitoring program as described in RCW 18.130.175 that meets criteria established by the ((commission)) board. WHPS does not provide evaluation or treatment services.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

**WAC 246-840-770 Approval of substance ((abuse)) use monitoring programs.** The ((commission)) board uses WHPS as the approved monitoring program.

(1) WHPS will:

(a) Employ staff with the qualifications and knowledge of both substance ((abuse)) use and the practice of nursing as defined in this chapter to be able to evaluate:

(i) Clinical laboratories;

(ii) Laboratory results;

(iii) Providers of substance ((abuse)) use treatment, both individuals and facilities;

(iv) Peer support groups;

(v) The nursing work environment; and

(vi) The ability of the nurse to practice with reasonable skill and safety.

(b) Enter into a monitoring contract with the nurse to oversee the nurse's required recovery activities. Exceptions may be made to individual components of the contract as needed.

(c) Determine, on an individual basis, whether a nurse will be prohibited from engaging in the practice of nursing for a period of time and restrictions, if any, on the nurse's access to controlled substances in the workplace.

(d) Maintain case records on participating nurses.

(e) Report to the ~~((commission))~~ board any nurse who fails to comply with the requirements of the monitoring program as defined by the ~~((commission))~~ board.

(f) Provide the ~~((commission))~~ board with an annual statistical report.

(2) The ~~((commission))~~ board approves WHPS's procedures on treatment, monitoring, and limitations on the practice of nursing for those participating in the program.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

**WAC 246-840-780 Conditions for participants entering the approved substance ~~((abuse))~~ use monitoring program.** (1) Any nurse participating in the substance ~~((abuse))~~ use monitoring program must:

(a) Undergo a complete substance use disorder evaluation. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.

(b) Enter into a monitoring contract with WHPS which includes, but is not limited to, the following terms, which require the nurse to:

(i) Undergo any recommended level of treatment ~~((in an approved treatment facility))~~ by a board-designated licensed treatment provider, including continuing care;

(ii) Abstain from all mind-altering substances including alcohol and cannabis except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101;

(iii) Cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals;

(iv) Attend peer support group, or self-help group meetings, or both as specified by WHPS;

(v) Complete random or for-cause drug screening as specified by WHPS;

(vi) Comply with specified employment conditions and restrictions as defined by the monitoring contract;

(vii) Agree in writing to allow WHPS to release information to the ~~((commission))~~ board if the nurse does not comply with any contract requirements or is unable to practice with reasonable skill and safety;

(viii) Pay the costs of any required evaluations, substance ~~((abuse))~~ use treatment, peer support group, random drug screens, and other personal expenses incurred in relation to the monitoring program;

(ix) Sign any requested release of information authorizations.

(2) When referred to WHPS in lieu of discipline, the nurse must enter into a referral contract with the ~~((commission))~~ board. The ~~((commission))~~ board may take disciplinary action against the nurse's license under RCW 18.130.160 based on any violation by the nurse of the referral contract.

(3) A nurse may voluntarily participate in WHPS in accordance with RCW 18.130.175(2) without first being referred to WHPS by the ~~((commission))~~ board.

NEW SECTION

**WAC 246-840-790 Substance use disorder monitoring stipend program.** (1) Applicants must meet the requirements in RCW 18.79.440 to be eligible for the substance use disorder monitoring stipend program (stipend program). All disbursements of stipend program funds are subject to availability of budgeted funds.

(2) To be eligible for the stipend program, a person must:

(a) Hold an active, inactive, or suspended license issued pursuant to this chapter;

(b) Submit an application on forms provided by the board;

(c) Be actively participating in the board's approved substance use disorder monitoring program (WHPS program) or have completed the WHPS program within six months of submission of an application for the stipend program; and

(d) Have a demonstrated need for financial assistance with the expenses incurred in connection with participation in the WHPS program.

(3) A person is not eligible for the stipend program if they have previously applied for and participated in the stipend program and had benefits paid on their behalf from the stipend program.

(4) The board may defray up to 80 percent of each out-of-pocket expense deemed eligible for defrayment under this section. The board will not pay stipend program funds directly to any person participating in the stipend program. The board will pay out-of-pocket expenses directly to entities providing services to the person participating in the stipend program.

(5) Out-of-pocket expenses eligible for defrayment under this section include the costs of substance use evaluation, treatment, other ancillary services, including drug testing, participation in professional peer support groups, and any other expenses deemed appropriate by the board.

(6) A person participating in the stipend program established in this section shall document and submit their out-of-pocket expenses in a manner specified by the board.

(7) Eligibility:

(a) A person may participate in the stipend program by having the stipend program defray authorized out-of-pocket expenses for one monitoring contract period only, including extensions of the contract monitoring period directed by WHPS.

(b) An applicant who was approved for the stipend program for a monitoring contract period without having benefits paid from the stipend program on their behalf, and later reenters the WHPS program, may be approved to participate in the stipend program.

(c) Stipend program applications are approved for a 12-month period. Persons participating in the stipend program shall submit an application every 12 months to renew their participation in the stipend program.

(d) A person may participate in the stipend program for a maximum of five years from the approval date of the initial stipend program application. Eligibility for the stipend program terminates upon successful completion of or discharge from the WHPS program.

(e) An applicant who previously applied for the stipend program but whose application was denied is eligible to reapply if the applicant's financial circumstances have changed.



(8) To establish financial need for the stipend program, a person shall provide documentary proof that total household income is less than 400 percent of the federal poverty level as determined under 42 U.S.C. 9902(2) and published annually by the U.S. Department of Health and Human Services.

(9) Application forms and documentary proof provided to the board under this section by applicants will be submitted under penalty of perjury and, if shown to be false, could subject the applicant to criminal penalties or other adverse action including, but not limited to, adverse action for moral turpitude, misrepresentation, or fraud.

(10) The stipend program may defray the cost of eligible out-of-pocket expenses incurred by a stipend program participant up to six months prior to application submission.

(11) The board may adopt, publish, and use procedures, forms, guidelines, and other documents necessary for implementation of this rule. Such procedures, forms, guidelines, and documents may be revised, amended, or discontinued as necessary in the sole discretion of the board.