

Significant Legislative Rule Analysis

WAC 246-840-750 through
246-840-790

A rule relating to the Board
of Nursing's substance use
disorder (SUD) monitoring
program



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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 Legislature passed Substitute House Bill (SHB) 1255, (chapter 141, Laws of 2023) which was signed by the Governor, and became effective July 23, 2023. It was codified in RCW 18.79.440.

By July 1, 2024, the Washington State Board of Nursing (board) is required to establish a stipend program to defray the out-of-pocket expenses incurred in connection with a license holder's participation in Washington Health Professional Services (WHPS). The cost of evaluation and treatment is the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources.

The cost of treatment and recovery is significant depending on a nurse's income and resources. Nurses may also lose employment because of a substance use disorder (SUD) which creates even greater barriers to receiving treatment. For those reasons, the Legislature passed SHB 1255 as an incentive for more nurses to participate in the WHPS program.

The statute clearly establishes eligibility and requires that the individual must:

- Hold an active, inactive, or suspended license as a registered nurse, advanced registered nurse practitioner, or licensed practical nurse
- Submit an application; be actively participating in WHPS or have completed WHPS within six months of submission of an application for the stipend program
- Have a demonstrated need for financial assistance with the expenses incurred in connection with participation in WHPS.

A person is not eligible for the stipend program if the person has previously applied for and participated in the stipend program. The board may defray up to 80 percent of each out-of-pocket expense deemed eligible for defrayment.

Expenses eligible for reimbursement include the costs of substance use evaluation, treatment, and other ancillary services, including drug testing, participation in professional peer support groups, and any other expenses deemed appropriate by the board. The board must provide certain information on its website regarding the stipend program, including the number of participants, the amount of expenses defrayed under the stipend program, and the amount of funds available.

The board presented cost information to legislators to assist in decision-making about establishing a stipend program. A cost summary follows:

SA Table 1. WHPS Participation Costs

Service:	Without insurance/ Participant Share	With insurance/ Participant Share	Additional expenses/notes
Inpatient/Residential Treatment	\$21,000 to \$45,000	\$4,200 to \$9,000 (20%)	30 days, averaging \$700 to \$1,500 per day per visit
Intensive Outpatient (IOP) Treatment	\$6,000	\$1,200 (20%)	30 to 60 days, 2-3x weekly/ \$25 to \$50 copay per visit
Outpatient Treatment	\$3,200	\$640 (20%)	30 to 60 days, 1-2x weekly/ \$25 to \$50 copay per visit
ADIS (Relapse Prevention)	\$560	\$560	
Mental Health Treatment	\$4,100	\$820 (20%)	30-60 day, 2-3x monthly \$25 to \$50 copay per visit
Peer Support Group	Single group: average \$75 per meeting OR Annual Cost: \$900/year		
SUD Evaluation	\$350	\$25 to \$50 copay	
Mental Health (MH) Evaluation	\$350	\$25 to \$50 copay	
<p>Most insurance companies do not cover initial evaluations to determine MH or SUD diagnosis. Insurance coverage varies with each insurance company and type of policy. Additional evaluations typically are not covered. Apple Health (Medicaid) will not pay for additional evaluations due to contract non-compliance. Other insurances may or may not cover additional evaluations and/or treatment services based on insurance policies.</p>			

History:

The board is the disciplining authority for nursing professions, including registered nurses, advanced registered nurse practitioners, and licensed practical nurses. If the board determines alleged professional misconduct is related to substance use issues, the board may refer the license holder to WHPS as a condition of licensure. Nurses who are not subject to disciplinary action may refer themselves to WHPS for assistance.

Why the proposed rule is needed:

To clearly state the requirements for participation in the stipend program, rulemaking is necessary. The board is proposing amendments to current rule sections establishing new definitions related to the stipend program, changing “abuse” to “use,” “commission” to “board,” and other changes relating to the board’s SUD monitoring and treatment program.

The board is also proposing to create a new rule section establishing application requirements for a stipend, as directed by SHB 1255. The proposed new rule mirrors the statutes eligibility requirements to establish background. Further the proposed rule 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. The proposed new rule, WAC 246-840-790, requires applicants to provide documentary proof that total household income is less than 400% of the federal poverty level as determined under 42 U.S.C. 9902(2), published annually by the U.S. Department of Health and Human Services. Staff consulted the Department of Health (department) economist, the board’s Substance Use Disorder Review Panel (SUDRP), and the board’s Discipline Subcommittee to determine a recommended fiscal threshold.

SECTION 2

Significant Analysis Requirement

As defined in RCW 34.05.328, a new section of the rule (WAC 246-840-790) requires significant analysis because it establishes the qualifying requirements to participate in a stipend program authorized by SHB 1255.

SA Table 2 identifies rule sections in WAC 246-840-750 through 246-840-780 that have been determined exempt from significant analysis based on the exemptions provided in RCW 34.05.328(5) (b) and (c).

SA Table 2. Summary of chapter 246-841A WAC Sections not requiring Significant Analysis.

WAC Section and Title	Description of Proposed Change	Rationale for Exemption Determination
<p>WAC 246-840-750</p> <p>Philosophy governing voluntary substance use monitoring programs.</p>	<p>SSB 5499 changed the name of the Washington State Nursing Care Quality Assurance Commission to the Washington State Board of Nursing.</p> <p>All references in WAC 246-840-750 are changed from “commission” to “board” and “abuse” to “use.”</p>	<p>Exempt under RCW 34.05.328(5)(b)(iv), rules that only clarify language of a rule without changing its effect.</p> <p>The previous term “commission” and current term “board” refer to the same entity.</p>
<p>WAC 246-840-760</p> <p>Definitions of terms used in WAC 246-840-750 through 246-840-790.</p>	<p>The section updates and adds definitions of terms used in the chapter to explain the stipend program.</p>	<p>Exempt under RCW 34.05.328(5)(b)(iv), rules that only clarify language of a rule without changing its effect.</p> <p>The section includes new definitions that are not considered requirements and are not enforceable, yet consistently define terms used within the chapter.</p>
<p>WAC 246-840-770</p> <p>Approval of substance use monitoring programs.</p>	<p>All references in WAC 246-840-770 are changed from “commission” to “board.” “Abuse” is changed to “use” where appropriate.</p>	<p>Exempt under RCW 34.05.328(5)(b)(iv), rules that only clarify language of a rule without changing its effect.</p>

		The previous term “commission” and current term “board” refer to the same entity.
<p>WAC 246-840-780</p> <p>Conditions for participants entering the approved substance use monitoring program</p>	<p>Changes “...in an approved treatment facility” to “by a designated licensed treatment provider...”</p> <p>All references in WAC 246-840-780 are changed from “commission” to “board” and “abuse” to “use.”</p>	<p>Exempt under RCW 34.05.328(5)(b)(iv), rules that only clarify language of a rule without changing its effect.</p> <p>The change clarifies who may provide treatment.</p> <p>The previous term “commission” and current term “board” refer to the same entity.</p>

SECTION 3

Goals and objectives of the statute that the rule implements.

SHB 1255 establishes the SUD Stipend Program with the objective of encouraging initial participation and continuation in the program by defraying up to 80 percent of out-of-pocket expenses for nurses who establish a financial need.

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

RCW 18.130.175 establishes physician health and voluntary substance use disorder monitoring programs.

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.

Rulemaking is necessary to carry out the Legislature's directions as reflected in SHB 1255 by establishing enforceable requirements for nurses to apply for the stipend program.

Rulemaking also enables the board to amend the rules to change "commission" to "board," to add new definitions and to clarify language relating to the SUD monitoring and treatment program.

The board would not be able to implement the SUD Stipend Program without establishing requirements for nurses to apply for the stipend program to receive defrayment. Rulemaking is the only viable option to carry out the directions of the Legislature.

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 246-840-790. Substance Use Disorder Monitoring Stipend Program.

Description: The board is proposing to create a new rule section to establish requirements to apply for a stipend, as directed by SHB 1255 Nursing — Substance Use Disorder Monitoring Program Participation. 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 to establish background. Further the proposed rule defines the process the board will use to pay the out-of-pocket expenses through the stipend program, clarifies by referencing what the board's approved SUD program is as established in existing rules, and establishes eligibility requirements including defining what a "financial need" is. The proposed rule requires applicants to provide documentary proof that total household income is less than 400% of the federal poverty level as determined under 42 U.S.C. 9902(2), published annually by the U.S. Department of Health and Human Services.¹ Staff consulted the department economist, the board's SUDRP, and the board's Discipline Subcommittee to determine a recommended fiscal threshold.

Cost: There are costs associated with treatment and recovery in the SUD program as demonstrated in Section 1, SA Table 1. WHPS Participation Costs, but there are no additional costs to nurses who apply for or participate in the stipend program which is meant to reduce their out-of-pocket expenses. The proposed rule establishes the process and information need for the applicant to apply for the defrayment.

Benefit: Defrayment of up to 80 percent of out-of-pocket expenses for nurses who apply and can demonstrate a financial need will encourage initial and ongoing participation in the SUD Stipend Program. This was the directive of the 2023 Legislature when they enacted, and the Governor signed, SHB 1255.

The WHPS program has been available to nurses in Washington state since 1988. Currently there are 237 nurses in the program out of a total 143,295 licensed nurses in the state. "The

¹ [Poverty Guidelines | ASPE \(hhs.gov\)](#)

Nurse Worklife and Wellness Study conducted by Trinkoff et. al. (2022) estimated the prevalence of substance use (SU) and SUD among a sample of 1,200 nationally represented and randomly selected registered nurses in nine states. The investigators found illicit drug use was 5.7%, and prescription-type drug misuse was 9.9% in 2021. Rates were highest among nurses working in home health or hospice (19%) and nursing homes (15.8%). Overall, 18% of nurses screened were positive for substance use problems...”.^{2,3} Eighteen percent (18%) of Washington state’s 143,295 nurses may suffer from substance use and benefit from treatment; this is an estimated total of 25,793 nurses who may benefit from the program.

Determination

Probable Benefits greater than Probable Costs

The board determined the probable benefits of the proposed rule outweigh the probable costs.

² [Recognizing Substance Use Disorders in Nurses | Lippincott NursingCenter](#)

³ [The Prevalence of Substance Use and Substance Use Problems in Registered Nurses: Estimates From the Nurse Worklife and Wellness Study - Journal of Nursing Regulation](#)

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 board considered not engaging in rulemaking since the stipend program is already in statute but determined that the proposed rule changes and new section were necessary to establish the process for participants to show eligibility and to receive the stipend and to define “financial need.” This was the least burdensome alternative for those required to comply with the proposed rule.

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.