Final Significant Legislative Rule Analysis

Chapter 246-341 WAC
a Rule Concerning Behavioral Health Agency
Licensing and Certification Requirements

October 27, 2022

SECTON 1:

Describe the rule, including a brief history of the issue, and explain why the rule is needed.

In 2018, the legislature transferred authority and responsibility for behavioral health agency licensing and certification from the Department of Social and Health Services (DSHS) to the Department of Health (department) pursuant to Section 10002 of 2ESHB 1388 (chapter 201, Laws of 2018). Subsequently, the department transferred DSHS' chapter of rules to department authority in chapter 246-341 WAC, only incorporating changes necessary to reflect the department's new authority for licensing and certification of behavioral health agencies.

Since then, the department has been working with interested partners to clean up, streamline, and improve licensing regulations and the licensing process with the goal of decreasing regulatory burden and redundancy while increasing access to behavioral health services. Due to the extensive nature of this rules project, the department has approached it in three phases:

- Phase one (completed in 2020) - general clean-up and clarification.
- Phase two (current) - re-organization of the chapter including aligning mental health and substance use disorder service standards and streamlining certifications.
- Phase three (proposed for 2022)- aligning standards across behavioral health facility types.

The rules presented here constitute phase two of the project. Most of the changes to the rule are intended to increase flexibility and decrease the administrative burden associated with licensing processes. Several areas of the rule do add compliance requirements for providing certain services, but these are meant to align requirements for substance use disorder and mental health services, making it easier for agencies to provide co-occurring services. This also assures that similar standards are applied to both services.

Additionally, the coronavirus disease 2019 (COVID-19) pandemic has changed the landscape of behavioral health services, resulting in an increased need for accessible services and innovative ways of delivering them.

The rules must be amended to continue to implement the multi-phase work plan, incorporate new policy ideas to address the needs identified during the pandemic, and to support increased and equitable access to quality behavioral health services. The department examined and discussed the rules with interested parties and partners to consider what changes might be made to the licensure and certification of services in behavioral health facilities, and to consider incorporating and implementing other recommendations and legislative directives.

As part of this phase two project, the department held weekly rules workshop webinars over four months in the summer and autumn of 2021. The workshops were open to all partners and interested parties. Over 400 participants registered for the workshop series with 60-100 attendees participating each individual session. The department again recognizes the generous sacrifice of time, expertise, and innovation that was demonstrated by participants in the continued improvement of the rules for behavioral health agencies. This draft represents our collective best

efforts to take the next step toward improving the delivery, quality, and availability of behavioral health services in the state of Washington.

SECTION 2:

Is a Significant Analysis required for this rule?

Yes, as defined in RCW 34.05.328, portions of the rule require a significant analysis. The department determined the revisions include some significant legislative rule sections that are subject to the requirements of RCW 34.05.328(5). The revisions include both new sections and changes to existing sections. This significant analysis evaluates each of the new and amended rule sections to determine whether the changes in each section are significant or non-significant. The following SA Table 1 identifies the 33 rule sections the department has determined are exempt from analysis based on RCW 34.05.328(5) (b) and (c).

The department made several clarifying changes to the proposed rule upon adoption, as a result of suggestions received during the public comment period as well as additional internal review. These changes are marked with an asterisk (*) in the following table.

SA Table 1. Summary of rule sections not requiring analysis

WAC Section and Title	Description of Changes	Rationale for Exemption Determination
WAC 246-341-0100 Behavioral health-Purpose and scope.	- Changed the caption from "Behavioral health services-Purpose and scope" to "Behavioral health-Purpose and scope."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0200 Behavioral health-Definitions	- Updated the definition of "certified" or "certification." - Changed the term "clinical record" to "individual service record." - "Replaced the term "psychological" with "behavioral health." - Added a definition of "face-to-face." - Added a definition of "behavioral health service." - "Amended the definition of "progress notes." - Added a definition of "peer	This section is not a significant legislative rule as defined in RCW 34.05.328(5)(c)(iii). Definitions are considered an interpretive rule.

	support." - Updated the reference to RCW 43.20A.890 in the definition of "licensed" or "licensure." This statute has been recodified as RCW 41.05.750.* - Added a reference to RCW 43.70.080(5), regarding the department's authority to certify problem gambling and gambling disorder treatment programs. *	
WAC 246-341-0320 Agency licensure and certification-On-site reviews and plans of correction.	- Updated terminology pertaining to clinical records. - In subsection (4)(a), removed the term "negotiated" as it pertains to the time frame agreed upon by the agency and the department, as it is redundant. *	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0335 Agency licensure and certification – Denials, suspensions, revocations, and penalties.	- In subsection (1)(a), clarified that the department can take enforcement action if the agency fails to meet the "applicable" requirements in chapter 246-341 WAC and added chapters 71.24 RCW, 71.05, 71.34 and 71.12 RCW; or RCW 41.05.750. *	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0365 Agency licensure and certification-fee requirements.	- Amended to specify that a fee applies when a substance use disorder (SUD) agency adds a certification rather than an individual service. - Clarified that agencies certified for inpatient/residential mental health services pay fees based on annual service hours. This certification replaces the need for residential treatment facilities (RTFs) to be certified for outpatient services in which the fees are based on annual service hours. The intent is that this new certification will not change the fee amount that these agencies are currently paying. - Removed subsection (2), which describes the types of payment	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(vi), as it relates to the setting or adjusting of fees.

	methods the department will accept. This information is not needed in rule and will be provided either on the application, on the web, or both.	

WAC 246-341-0425 Agency administration-Individual service record system.	- Updated terminology pertaining to clinical records.
	- Moved language from WAC 246-341-0650 to this section, regarding:
	  o The provision of health records to an individual
	  o The availability of records in hard-copy form
	  o Department access to individual health records
	  o Requirements for the provision of information to the Department of Corrections (DOC), when an individual is receiving mental health services under their supervision
	- Changed the caption from "Agency administration-Individual clinical record system" to "Agency administration-Individual service record system."
	- In subsection (10), removed the term "mental health", so that it refers more generally to services provided under the supervision of the DOC, and added the phrase "except as restricted by federal law or regulation" to clarify that there are cases in which individual consent is required for the release of information. This clarifying change was made as a result of a suggestion from an interested party that was received during the public comment period. *
		This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.

WAC 246-341-0510 Personnel-Agency record requirements.	- Updated terminology pertaining to clinical records.	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0605 Complaint process.	- Updated terminology pertaining to clinical records. - In subsection (5), corrected the reference to the department's ability to assess a fee under RCW 43.70.250. *	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-0680 Emergency service patrol-Service standards.	- Replaced the term "drug abuse" with substance use disorder."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0720 Supported employment behavioral health services-Service standards.	- Clarified that supported employment services are not required to be provided under clinical supervision. - Changed the caption from "Outpatient services-Recovery support-Supported employment mental health and substance use disorder services" to "Supported employment behavioral health services-Service standards" and updated the description of these services. *	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0722 Supportive housing behavioral health services-Service standards.	- Clarified that supportive housing services are not required to be provided under clinical supervision. - Changed the caption from "Outpatient services-Recovery support-Supportive housing mental health and substance use disorder services" to "Supportive housing behavioral health services-Service standards" and updated the description of these services. *	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0725 Mental health peer	- Clarified that mental health peer respite facilities provide peer	This section of rule is exempt from analysis under

respite-Certification standards.	support services. - Incorporated that agencies certified for mental health peer respite services must meet the certification requirements in WAC 246-341-0700, which took the place of WACs 246-341-0718 and -0724. Removed references to agencies having to meet the requirements in WAC 246-341-0718 and -0724, which have been repealed. - Updated the terminology in (3)(a) from "memorandum of understanding" to "agreement." - In subsection (3)(c)(i), updated the term "governing board" to "governing body." *	RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
NEW 246-341-0737 Behavioral health outpatient intervention, assessment, and treatment services-Certification standards.	- Created a new certification category that incorporates services that include assessments, counseling/therapy, and medication management, including court-ordered services. - Incorporated that agencies providing only assessment, psychiatric medication management, or Alcohol and Drug Information School (ADIS) services are not required to meet the individual service plan (ISP) or discharge requirements in WAC 246-341-0640. - Incorporated the court-ordered noncompliance reporting requirements in WAC 246-341-0800. - In subsection (4), corrected a reference to RCW 71.05.445. *	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0740 Deferred prosecution under RCW 10.05.150-Service standards.	- Removed references to level two intensive outpatient SUD services. - Removed subsection (1)(d), which states that the agency must report noncompliance with	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.

	the court mandated treatment in accordance with WAC 246-341-0800. This requirement is included in subsection (4) of the certification standards for behavioral health outpatient intervention, assessment, and treatment services (WAC 246-341-0737). - Changed the caption from "Outpatient services-Level two intensive outpatient substance use disorder services" to "Deferred prosecution under RCW 10.05.150-Service standards."	
WAC 246-341-0746 Alcohol and drug information school-Service standards.	- Included clarifying language, based on stated current practice, that agencies providing this service must include a copy of an assessment, if the individual was assessed, that indicates the individual does not have a substance use disorder in the behavioral health record. An individual service plan does not need to be included. - Changed the caption from "Outpatient services-Substance use disorder information and assistance services-Alcohol and drug information school" to "Alcohol and drug information school-Service standards."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-0805 Outpatient less restrictive alternative (LRA) or conditional release support behavioral health services-Service standards.	- Updated terminology pertaining to clinical records. - Changed the caption from "Involuntary and court-ordered-Outpatient less restrictive alternative (LRA) or conditional release support behavioral health services" to "Outpatient less restrictive alternative (LRA) or conditional release support behavioral health services-Service standards."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.

WAC 246-341-0815 Substance use disorder counseling for RCW 46.61.5056-Service standards.	- Updated terminology pertaining to clinical records. - Changed the caption from "Involuntary and court-ordered-Substance use disorder counseling for RCW 46.61.5056" to "Substance use disorder counseling from RCW 46.61.5056-Service standards."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-0912 Designated crisis responder services-Certification standards.	- Clarified that agencies certified for designated crisis responder (DCR) services do not need to meet the general requirements for crisis services in WAC 246-341-0900 and must instead meet the outpatient crisis outreach, observation, and intervention services certification standards in WAC 246-341-0901.	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1015 Opioid treatment programs (OTP)-Individual service record content and documentation requirements.	- Updated terminology pertaining to clinical records. - Changed the caption from "Opioid treatment programs (OTP)-Clinical record content and documentation requirements" to "Opioid treatment programs (OTP)-Individual service record content and documentation requirements."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1020 Opioid treatment programs (OTP)-Medical director responsibility.	- Updated terminology pertaining to clinical records. - Incorporated interpretive statement filed as WSR 21-21-071 on OTP Annual Medical Exam via Telehealth. Current rule requires an annual medical exam but is not clear that this exam can be conducted via telehealth. The rule clarifies options for this medical exam.	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1100 Withdrawal management-Certification standards.	- Clarified that this section pertains to medically supported SUD withdrawal management that includes medical monitoring or management.	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without

	- Clarified that the services that fall under this certification include adult withdrawal management and youth withdrawal management. - Clarified language requiring agencies certified for this service to also meet the certification standards in WAC 246-341-1105 and the individual service requirements in WAC 246-341-1108. - Changed the caption from "Withdrawal management services" to "Withdrawal management-Certification standards."	changing its effect.
WAC 246-341-1108 Residential and inpatient substance use disorder treatment services-Service standards.	- Removed the list of specific residential treatment services found in subsection (1). - Clarified that this section pertains to residential and inpatient substance use disorder treatment services. - Incorporated all of the requirements from repealed section 246-341-1070, inpatient and residential substance use disorder services. These requirements are in subsections (5) through (9). - Removed the requirements pertaining to SUD residential services for youth. These requirements have been moved to WAC 246-341-1105. - Clarified that agencies with this certification may choose to provide services to individuals under a less restrictive alternative order. - Changed the caption from "Residential substance use disorder treatment services-General" to "Residential and inpatient substance use disorder	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.

	treatment services-Service standards." - In subsection (7), clarified that the documentation requirements listed in this subsection are in addition to the general documentation requirements listed in WAC 246-341-0640. *	
WAC 246-341-1118 Residential and inpatient mental health services-Service standards.	- Removed the list of specific mental health inpatient services found in subsection (1). - Clarified that this section pertains to residential and inpatient mental health services. This is a new certification that is meant to replace the need for RTFs to be certified for outpatient mental health services. - Clarified that the general requirements for residential and inpatient facilities apply to agencies with this certification. - Incorporated requirements from WAC 246-341-1118. - Changed the term "individual care" to "individualized treatment" in subsection (1)(b), to reflect trauma-informed care. - Moved the requirement for agencies to ensure the rights of individuals to make mental health advanced directives and facility protocols for responding to individual and agency requests from this WAC section to sections 246-341-0420 and -0600. - Changed the caption from "Mental health inpatient services" to "Residential and inpatient mental health services-Service standards."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1124 Residential and inpatient mental health	- Changed the caption from "Mental health inpatient services-Rights related to	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv).

services-Rights related to antipsychotic medication.	antipsychotic medication" to "Residential and inpatient mental health services-Rights related to antipsychotic medication.	The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-1131 Involuntary behavioral health residential and inpatient services-Certification standards.	- Clarified that the services included under this certification are adult and youth involuntary evaluation and treatment and secure withdrawal management. - Incorporated language requiring agencies certified for involuntary behavioral health residential and inpatient services to also follow the certification standards for residential and inpatient behavioral health services in WAC 246-341-1105. - Clarified that the individuals served under this certification are either those subject to a civil commitment or court-order under chapter 71.05 RCW or 71.34 RCW or those "who have been court ordered to receive treatment at a certified agency pursuant to chapter 10.77 RCW" to align with statutory authority. *	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-1133 Evaluation and treatment services-Service standards.	- Incorporated all of the requirements from repealed section 246-341-1138, pertaining to the Children's Long-term Inpatient Program (CLIP), as CLIP services are long-term treatment services covered in chapter 71.34 RCW. These requirements can be found in subsection (2). - Incorporated language requiring agencies providing this service to also follow the individual service standards in WAC 246-341-1105. - Clarified that agencies with this certification may choose to	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.

	provide services to individuals on a less restrictive order.	
NEW WAC 246-341-1135 Secure withdrawal management and stabilization services-Service standards.	- Incorporated language requiring agencies providing this service to also meet the certification standards for medically supported withdrawal management in WAC 246-341-1100.	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1137 Intensive behavioral health treatment services-Certification standards.	- Incorporated that the agency must meet the residential and inpatient intervention, assessment and treatment services certification standards in WAC 246-341-1105 and the residential and inpatient mental health individual service standards in WAC 246-341-1118. - Changed the caption from "Behavioral health inpatient services-Intensive behavioral health treatment services" to "Intensive behavioral health treatment services-Certification standards." - In subsection (12)(e), replaced the term "permission" with "consent." * - In subsection (13)(d)(ii), clarified that "the individual may consent or refuse to consent" to the release of records. * - In subsection (13)(e), replaced the term "residents" with "individuals receiving services at the agency." *	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1140 Crisis stabilization unit and triage-Certification standards.	- Incorporated language requiring agencies that are certified to provide crisis stabilization unit or triage services to also meet the individual service standards for residential and inpatient mental health services in WAC 246-341-1105 and the applicable standards in WAC 246-341-	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.

	1131, if providing involuntary crisis stabilization unit or triage services. - Changed the caption from "Mental health inpatient services-Crisis stabilization unit and triage" to "Crisis stabilization unit and triage-Certification standards." - In subsection (6), replaced the term "mental health" with "behavioral health." *	
WAC 246-341-1154 Competency evaluation and restoration.	- Updated terminology pertaining to clinical records. - Incorporated that the agency must follow requirements in WAC 246-341-1105 and applicable requirements in WAC 246-341-1131. - Changed the caption from "Mental health inpatient services-Competency evaluation and restoration" to "Competency evaluation and restoration."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1156 Competency evaluation and restoration-Rights	- Updated terminology pertaining to clinical records. - Changed the caption from "Mental health inpatient services-Competency evaluation and restoration-Rights" to "Competency evaluation and restoration-Rights."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
WAC 246-341-1158 Competency evaluation and restoration-Seclusion and restraint	- Updated terminology pertaining to clinical records. - Changed the caption from "Mental health inpatient services-Competency evaluation and restoration-Seclusion and restraint" to "Competency evaluation and restoration-Seclusion and restraint."	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without changing its effect.
NEW WAC 246-341-1200 Problem gambling and gambling disorder services-Certification	- The content of this section is based on what was previously in WAC 246-341-0754. There were no changes made to the language in this section.	This section of rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv). The change clarifies the language in the rule without

standards.		changing its effect.

Throughout the chapter, the department also updated references to WACs and RCWs and made stylistic and formatting edits for conciseness and readability.

SECTION 3:

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

Chapter 246-341 WAC implements three main statutes (below). These statutes govern the behavioral health work of multiple state agencies. The overarching intent of the statutes is to establish a public behavioral health system so that individuals can access timely and appropriate behavioral health services. The intent as it relates specifically to the department in each of these three statutes is to establish licensure requirements and standards for behavioral health agencies and services to assure access, safety and quality of care through regulation and policy.

- Chapter 71.24 RCW governs community behavioral health services and agencies.
- Chapter 71.05 RCW governs involuntary behavioral health services for adults.
- Chapter 71.34 RCW governs behavioral health services for minors.

The department worked with partners and interested parties to examine the rules and identify where changes could be made to support the intent of the statutes. The rule meets the intent of these statutes by:

- Reducing duplicative, inefficient, burdensome and unnecessary regulations for behavioral health agencies.
- Aligning mental health and substance use disorder standards to support agencies providing co-occuring services and create consistency in service delivery.
- Allowing agencies more flexibility to adjust their services to meet the needs of their community.
- Increasing access to care by supporting use of telehealth and mobile services.

SECTION 4:

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

Chapter 71.24 RCW, and RCW 71.24.037 in particular, requires licensed agencies to be certified for all services provided and directs the department to establish rules for the certified services. As a result, the only way to achieve the goals of this statute was through rulemaking. Without adopting new rules, licensure and certification standards could not be fully aligned with the

department's mission and agencies would be limited in their ability (or face unnecessary burdens) to deliver behavioral health services.

SECTION 5:

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

The department worked with workshop participants to determine which of the rule changes or new rule sections represent a change in cost. Based on these discussions, the department distributed a cost survey to all participants, partners, and interested parties asking for their cost information. The survey was distributed via email and a SurveyMonkey link was included. The survey was open from March 23 through April 6, 2022. Twenty-one behavioral health agencies responded to the survey.

Survey questions were grouped based on the type of certification held by a behavioral health agency or types of services provided. Survey respondents were asked whether they currently hold a particular certification or provide a distinct type of service. If they answered "yes" they were directed to the applicable question/set of questions. If they answered "no" they were directed to the next certification/service type. Several questions were applicable to all agencies. Throughout each of the WAC sections in this analysis, the department has provided the number of respondents that the answer was applicable to, as well as the number of respondents that answered the question.

For purposes of the analysis, increased cost was defined as the costs to adhere to the rule that are in addition to what an agency already expends, both up front and ongoing. Cost savings is defined as funds saved due to adhering to the rule. One-time costs or initial cost estimates were defined as a cost that occurs only once. Recurrent costs were defined as costs that occur each year on a continuous basis.

A. <u>WAC 246-341-0110 Behavioral health-Available certifications.</u>
Description: In current rule, every service provided by an agency is considered a separate certification and may not be provided without prior submission of an added service application and fee.

The rule creates broader categories of certifications with specific types of behavioral health services included within each certification category. The goal of broader certifications is to further promote the integration of mental health and substance use disorder services and to group individual services with common core requirements.

This question was applicable to all 21 survey respondents. Sixteen survey respondents answered this question.

Cost: Two agencies (2/16) estimated one-time costs between $1,000 and $2,000. These agencies made the following statements about costs:

- *Time to prepare materials, policies, completion of required documents, coordination with external entities (insurance carriers, etc.) in adding services.*
- *This is difficult to estimate given the unknown future events that might impact need for certifications. There would be initial cost to audit current locations (nearly 30) and ensure that current licenses and certifications were in alignment with new rules.*

One agency (1/16) estimated a recurrent cost of $250, stating that this would be the cost to "*re-do policies and update certification(s) as necessary*." The same agency that indicated a one-time cost of $2,000 indicated that there would be "no change" for recurrent costs. The department interpreted this response as an indication that their estimated recurrent cost would also be $2,000.

Most survey respondents (13/16) indicated that this change would be cost neutral or insignificant. These agencies made the following statements:

- *Mental Health Agencies do not pay to add services now, so there are no changes to fees. In addition, BHA's have to submit an added services application to DOH, and submitting a notification form and policies does not reduce administrative burden/costs.*
- *If I understand this correctly, in large measure we would be able to continue what we are doing but would not have to have all the services certified. I don't see this as a cost savings or a cost increase.*

Benefit: Agencies may have fewer certifications and greater flexibility to easily modify services they provide, to quickly meet the changing needs of the communities that they serve. In a poll conducted during a rulemaking workshop, most participants indicated that they preferred broadening certifications to help reduce administrative burden and provide the agency the ability to rapidly adjust in real-time. They also stated that this approach aligns with other health care sectors.

Two agencies (2/16) estimated recurrent savings of $200 and $5,000. Agencies made the following statements about cost savings:

- *Savings would come from not having as many certifications.*
- *Decreased complexities offer cost savings but are difficult to estimate.*
- *Whatever the fee cost was for applying to have additional services within the scope of their field specialty.*

Additionally, the department replaced the term "medically supported withdrawal management" with "withdrawal management" in subsection (1)(i), to be consistent with WAC 246-341-1100. This change is exempt from analysis under RCW 34.05.328 (5)(b)(iv), as it clarifies the language in the rule without changing its effect.

B. <u>WAC 246-341-0300 Agency licensure and certification-General information.</u>

Description: This section was updated to reflect the broader certification and individual services structure proposed in this phase of rulemaking. The rule specifies that when agencies are adding a new certification, they must submit an application before providing services under that specification. It also specifies that when adding an individual service under an existing certification, the agency may do so without pre-approval, but must notify the department and submit policies and procedures for the new service within 30 days.

The costs/benefits of this rule change are captured under Section 5 A.

Additionally, the department made the following clarifying changes to this section:

- Updated terminology in this section pertaining to clinical records.
- Removed a sentence pertaining to license renewal for the purpose of conciseness.
- Removed the word "treatment" from "behavioral health treatment services" to be consistent with the rest of the chapter as there is a spectrum of behavioral health services, such as support and peer services, in this chapter.
- Clarified that the references to "30 days" throughout this section are to calendar days.
- In subsection (6)(b), adding a certification, clarified that agencies must submit an application for certification before providing the services listed under that certification. In the proposed language, the department incorrectly stated that agencies must "obtain" certification first, which did not align with what is allowed in chapter 71.24 RCW.
- In subsection (10), effective date, clarified that the certification is effective for up to 12 months from the "date of issuance"**,** rather than the "effective date."

These changes to the rule are exempt from analysis under RCW 34.05.328 (5)(b)(iv). The changes clarify the language in the rule without changing its effect.

C. WAC 246-341-0310 Agency licensure and certification-Deeming.

Description: This section was updated to reflect the broader certification and individual services structure proposed in this phase of rulemaking.

The costs/benefits of this rule change are captured under Section 5 A.

D. WAC 246-341-0342 Agency licensure and certification-Off-site locations.

Description: Emergency rules allow Opioid Treatment Programs (OTP) and other behavioral health agencies (BHA) to add mobile units under an existing BHA license. Under the emergency rule, agencies are required to notify the department before operating a mobile unit under their license and describes the information that must be provided as part of the notification. Opioid treatment programs operating a mobile narcotic treatment program must comply with federal requirements. The rule would make this permanent.

Seventeen survey respondents answered that they are currently certified to provide outpatient mental health services. Five of them answered this cost question. The agencies that did not

answer the cost question (12) stated that even though they hold this certification, this cost question does not apply to their agency or that they have no plans to operate mobile units.

Cost: One survey respondent (1/5) estimated a one-time cost of $1,000 and a recurrent cost of $250. The agency said the following about the cost:

- *It would take time and new policies, new staff and technology to set up mobile BH services.*

Another respondent (1/5) estimated a one-time cost of $1,000,000 and a recurrent cost of $300,000. This agency is an OTP and did not provide an explanation of their estimated costs.

Other agencies (2/5) indicated that the changes would be cost neutral or insignificant.

The department anticipates that the cost of this rule will likely be lower than the responses provided by survey respondents, because the change does not require agencies to purchase and set up or maintain mobile units, but rather comply with the rules of having a mobile unit.

Benefit: This rule change will allow BHAs and OTPs to provide services as an extension of their existing BHA license without additional fees. It may also help increase access to behavioral health and OTP services for people in rural and underserved areas.

Additionally, one survey respondent (1/5) estimated a one-time savings of $500 and a recurrent savings of $200,000. This agency stated the following about the cost savings:

- *The ability to have mobile teams in Mental Health (MH) & Substance Use Disorder (SUD) capacity greatly expands agency's ability to see clients, which will allow for diversification of revenue streams.*

Additionally, the department reorganized this section so that the definitions of "off-site" and "established off-site location" are in (2)(a) and (b), rather than in (3)(a) and (b), and in subsection (6)(b), clarified that an OTP must comply with 21 C.F.R. Parts 1300, 1301, and 1304 "and any applicable rules of the Pharmacy Quality Assurance Commission." These change to the rule are exempt from analysis under RCW 34.05.328 (5)(b)(iv). The changes clarify the language in the rule without changing its effect.

E. <u>WAC 246-341-0420 Agency administration-Policies and procedures.</u>

Description: The rule adds a requirement for agencies to have a policy and procedure for mental health advanced directives in accordance with Chapter 71.32 RCW. Current WAC only mentions this requirement for inpatient/residential mental health facilities, but the law applies to all agencies.

This question was applicable to all 21 survey respondents. Fourteen survey respondents answered this question.

Cost: One survey respondent **(**1/14) estimated a one-time cost of $10,000 and a recurrent cost of $5,000. This agency made the following statement about the cost:

- *This policy is new to our agency. We would need to start with a legal review of the requirements, time to develop and review the policy, train staff, implement the process.*

All other respondents (13/14) stated that this would be a cost neutral or insignificant change, due to them already having a policy in place related to mental health advanced directives.

Benefit: This rule change will ensure the rights of individuals to make mental health advance directives as required by state law. This helps to also ensure that the person's mental health care will be carried out in circumstances in which they are unable to express their instructions and preferences.

Additionally, the department removed subsection (2), which states that the policies and procedures must include a copy of the agency's master business license. This is duplicative, as the master business license must be submitted as part of the application process. This change to the rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv), as it clarifies the language in the rule without changing its effect.

F. <u>WAC 246-341-0515 Personnel-Agency staff requirements.</u>

Description: Current rule requires all mental health agencies to have access to consultation with a psychiatrist, physician, physician assistant, advanced registered nurse practitioner, or psychologist. The rule removes this requirement since services must be provided under the clinical supervision of a mental health professional.

Seventeen survey respondents answered that they are currently certified to provide outpatient mental health services. Twelve of them answered this question.

Cost: Most survey respondents (11/12) indicated that this would be a cost neutral or insignificant change. Agencies stated the following regarding this change to the rule:

- *Agency has psychiatrist on-staff and would continue to offer this consultation after WAC changes occur due to importance of access to these positions for treatment.*
- *We employ psychiatrists and ARNPs for psychiatric assessments and ongoing medication management. Removing access to consultation will not impact use of these staff in our agency.*
- *We expect that our service model will not change, and that staff will have access to appropriate consultation as part of fidelity model services and/or best practice.*

Benefit: One agency (1/12) estimated that they would save at least $195 per month, for a recurrent savings of $2,340. They made the following statement about this change to the rule:

- *This is by far the best change made in a long time. Almost all clients carry their own physicians of whom any medically based assessments would go through anyway making this an unnecessary and cost burdened rule and we are glad to see it go.*

G. WAC 246-341-0600 Individual rights.

Description: The rule adds that an individual has the right to make a mental health directive consistent with RCW 71.32.150 (see letter F above).

The costs/benefits of this rule change are captured under Section 5 F.

Additionally, the department made the following clarifying changes to this section:

- Updated terminology in this section pertaining to clinical records.
- Clarified that the individual can submit a report to the department if they feel the agency has violated their rights or a WAC requirement.
- In subsection (2)(h)(i), deleted the reference to RCW 71.32.150, as that is specific to conditions for noncompliance, and replaced it with a reference to chapter 71.32 RCW.

These changes to the rule are exempt from analysis under RCW 34.05.328 (5)(b)(iv). The changes clarify the language in the rule without changing its effect.

H. WAC 246-341-0640 Individual service record content.

Description: The rule adds the *Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood* (DC:0-5) to (1)(c)(iv), which describes the tools that can be used to determine diagnoses for a diagnostic assessment statement.

Cost: The department anticipates that the cost of this rule is neutral. Recent legislation requires agencies to use this tool for assessments completed on infants and children aged 0-5.

Benefit: Current rule only lists the DSM-5 as an allowable assessment tool. However, recent legislation passed requiring the DC:0-5 tool to be used for infants and children aged 0-5. The rule adds the DC:0-5 so that agencies can utilize the DC:0-5 tool as allowed for in statute.

The department also made the following clarifying changes to this section:

- Updated terminology pertaining to clinical records.
- Clarified the terminology regarding certification and individual service requirements.
- Clarified that for SUD, both an assessment supported by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria and a placement decision using the American Society of Addiction Medicine (ASAM) criteria dimension are needed.
- Changed the caption from “Clinical record content” to “Individual service record content.”
- In subsection (2)(g), inserted language that clarifies in which instance the individual service record should include the required documentation. Additionally, deleted the word “permission” and replaced it with “consent, or if applicable, the consent of the individual’s parent or legal representation” when describing the release of the information to the new service provider.
- In subsection (2)(h), inserted language that clarifies in which instance the individual service record should include a copy of a third-party report.

- In subsection (2)(j), clarified that the individual service record must include a crisis plan, if one has been developed "or obtained."

These changes are exempt from analysis under RCW 34.05.328 (5)(b)(iv), as they clarify the language in the rule without changing its effect.

I. NEW WAC 246-341-0660 Behavioral health information and assistance-Certification standards.

Description: The current rule requires crisis substance use disorder facilities to maintain a list of referral resources. The rule extends this requirement to mental health crisis services in order to support co-occurring services.

Eight survey respondents answered that they are certified to provide mental health outpatient crisis services. All eight answered this question.

Cost: The department anticipated potential costs related to compiling a list of referral resources. However, all survey respondents (8/8) indicated that this would be a cost neutral or insignificant change. Agencies made the following statements about this rule change:

- *Agency already has list of referral sources for both MH & SUD services.*
- *Already in place.*
- *Resource lists are already available. Updating and keeping current has little cost.*

Benefit: This rule change supports the alignment of mental health and substance use disorder requirements and assures that agencies providing mental health crisis services have a list of referral resources so that individuals can be referred for services efficiently.

The department also made the following clarifying changes to this section:

- Incorporated language from WAC 246-341-0744 to specify that these services are considered nontreatment behavioral health services.
- Incorporated language from WAC 246-341-0744 and WAC 246-341-0900 to specify that agencies providing these services are not required to meet the requirements in WAC 246-341-0640.

These changes are exempt from analysis under RCW 34.05.328 (5)(b)(iv), as they clarify the language in the rule without changing its effect.

J. NEW WAC 246-341-0670 Crisis telephone support services-Service standards.

Description: New section -0670 standardizes requirements for mental health and SUD crisis telephone services. This includes incorporating a requirement for SUD crisis services to coordinate with the individual's treatment provider, if applicable, and remain with the individual until the crisis is resolved or a referral has been made. This is a new requirement for agencies providing SUD crisis services.

Four survey respondents answered that they provide SUD crisis outreach services. One of them answered this question.

Cost: The department anticipated costs associated with increased staff time to coordinate with the individual's treatment provider or remain with the individual until the crisis is resolved or a referral has been made. However, the one agency (1/1) that responded to this question indicated that this would be a cost neutral or insignificant change.

Benefit: This rule change supports the coordination of care for individuals receiving SUD services, which may result in improved health outcomes for this population.

Description: The current rule requires crisis substance use disorder facilities to maintain a list of referral resources. The rule extends this requirement to mental health crisis services in order to support co-occurring services.

The costs/benefits of this rule change are captured under Section 5 I.

Description: Current rules list documentation requirements for mental health crisis telephone services including a summary of the encounter, names of participants, credentials, crisis plan (if available), and follow-up plan. The rule extends this requirement to SUD crisis telephone services in order to support co-occurring services.

Four survey respondents answered that they provide SUD information and crisis services. All four answered this question.

Cost: The department anticipated potential costs due to requiring staff to collect and document additional information. However, agencies (4/4) indicated that this would be a cost neutral or insignificant change. One agency shared the following statement regarding this change:

- *Agency captures similar information for SUD & MH services & appreciates the standardization for crisis.*

Benefit: This rule change aligns mental health and substance use disorder requirements. Clear documentation is critical to be able to show and validate that appropriate care has been provided by appropriately credentialed providers. Requiring documentation of a crisis plan and a follow-up plan assures that the individual receiving services has been asked about a crisis plan and that the agency has developed a follow-up plan, which improves health outcomes.

Description: Current rule requires substance use disorder (SUD) crisis staff to have 40 hours of SUD training for staff providing SUD crisis services. The rule removes the 40-hour requirement and replaces it with training staff to identify and respond to individuals in crisis.

Four survey respondents answered that they provide SUD information and crisis services. All four answered this question.

Cost: The department anticipated a potential cost savings as individuals are not subject to a specific number of hours of training. Most survey respondents (3/4) indicated that this would be a cost neutral or insignificant change. One agency (1/4) estimated a one-time cost of $400 to update/create policy and work on the training. A different agency shared the following statement regarding this rule change:

- *[We] hire SUDP/SUDPT for SUD crisis services & will continue to do so with change. Will allow for other credentials that are properly trained to assist in response.*

Benefit: The same agency that estimated the one-time cost estimated recurrent savings of $50,400 in training time. In addition to the identified cost savings, this rule change identifies a more relevant type of training for SUD crisis staff who provide this service and does not require a specific number of hours of training.

The department also incorporated language from subsection (3) of WAC 246-341-0748 for the requirement in subsection (4). This states that an agency providing crisis telephone support services for SUD must ensure a professional appropriately credentialed to provide SUD treatment is available or on staff twenty-four hours a day, seven days a week. Previously the requirement was specifically for a substance use disorder professional (SUDP). This change to the rule is exempt from analysis under RCW 34.05.328 (5)(b)(iv), as it clarifies the language in the rule without changing its effect.

K. <u>WAC 246-341-0700 Behavioral health support services-Certification standards.</u>

Description: The rule includes outpatient crisis stabilization services under the certification for support services. The support services certification requires agencies to follow requirements in WAC 246-341-0700, which includes conducting a needs assessment to determine support services, developing a support plan, and maintaining referral documentation in the individual's service record. This is a new requirement for agencies providing outpatient crisis stabilization services.

Six survey respondents answered that they are certified to provide mental health outpatient crisis stabilization services. All six answered this question.

Cost: The department anticipated that this change would either be cost neutral or result in minimal costs, based on feedback received during workshops with interested parties. Feedback from agencies indicated that they currently identify the needs of the individual in order to provide individualized stabilization services and that a plan is developed based on those needs. The rule language requires documentation of this process.

One survey respondent (1/6) estimated a recurrent cost of $70,000, stating that "*conducting a formal needs assessment and the paperwork/time/etc. for this process will require additional*

staffing." Another agency (1/6) said that this change to the rule would result in a significant cost increase but did not list a specific cost. Instead, this agency stated the following:

- *These documents are not currently required for Crisis Stabilization services in recognition that these very short-term services are focused primarily on stabilizing the crisis at hand, and then referring to longer term services if appropriate. Safety/Crisis Plans are completed with all clients in crisis stabilization programs already. It looks like these will not meet criteria for a Support Plan, so we will need to add another layer of assessment and documentation to these interventions.*

Other respondents (4/6) indicated that this would be a cost neutral or insignificant change, with one agency explaining that "*this is our current practice*."

Benefit: The rule change shows an individualized approach to supporting the individual in crisis because it requires documentation indicating what stabilization services the individual needs and the plan for providing these short-term services.

The department also made the following clarifying changes to this section:

- Moved the services that include full assessment, counseling/therapy, or medication management to a separate section (WAC 246-341-0737) and kept only support services in this section.
- Clarified that the agency conducts a needs assessment or screening to determine appropriateness of services, rather than obtaining a full bio-psycho-social assessment and creates a support plan, rather than a full individual service plan.
- Defined peer support, rehabilitative case management, and day support, in accordance with State Medicaid Plan definitions.
- Clarified that if day support includes counseling/therapy than a separate certification is needed.
- Updated terminology pertaining to clinical records.

These changes are exempt from analysis under RCW 34.05.328 (5)(b)(iv), as they clarify the language in the rule without changing its effect.

L. <u>WAC 246-341-0713 Psychiatric medication monitoring services-Service standards.</u>

Description: Current rules do not allow driving under the influence (DUI) assessments to be provided via telehealth and are not clear whether outpatient crisis services or psychiatric medication monitoring can be provided via telehealth. The rule allows the use of synchronous video conferencing to provide DUI assessments and clarifies telehealth can be used for outpatient crisis services or psychiatric medication monitoring.

Fourteen survey respondents answered that they are certified for psychiatric medication management or monitoring. Nine answered this question.

Cost: The department anticipated that this change would either be cost neutral or result in a cost savings, since it is optional and if implemented, could save agencies money by potentially allowing them to reduce physical space. Most survey respondents (7/9) indicated that this would be a cost neutral or insignificant change. One agency (1/9) estimated a one-time cost of $2,000 and a recurrent cost of $500. This agency made the following statement about costs:

- *Initial cost for equipment but would be beneficial.*

Benefit: This rule change may increase access to patients by allowing agencies to provide this service through other means/methods and not just face-to-face. In addition, one survey respondent (1/9) estimated a one-time savings of $100,000. This agency made the following statement about savings:

- *Having the ability to provide MMO (Medication Management and Opioid) services via telehealth will allow for increased access to clients.*

Description: Current rules do not clearly state that agencies providing medication management or medication monitoring are not required to complete an individual service plan (ISP). The rules specify that an individual service plan is not required when providing psychiatric medication monitoring and management.

Fourteen survey respondents answered that they are certified for psychiatric medication management or monitoring. Twelve answered this question.

Cost: Most survey respondents (10/12) indicated that this would be a cost neutral or insignificant change. Zero survey respondents indicated costs associated with the change. Agencies made the following statements about this rule change:

- *This will not likely change our practice.*
- *This is difficult to estimate but does allow consideration of alternative service models.*
- *[We] will still require TX (treatment) plans for Medication Only services.*

Benefit: One survey respondent (1/12) estimated a one-time savings of $250,000. This agency made the following statement about savings:

- *By removing this requirement, agencies will no longer need to assign clients to clinicians that do not need clinical services but needed an ISP. This also increases the capacity of clinicians to serve other clients.*

Another agency indicated that this change would result in significant savings in staff time.

The department also made the following clarifying changes to this section:

- Updated terminology pertaining to clinical records.
- Changed the caption from "Outpatient services-Medication monitoring services" to "Psychiatric medication monitoring services-Service standards."

- In subsection (3), clarified that "a support plan or individual service plan is not required when an individual is only receiving psychiatric medication monitoring services."

These changes are exempt from analysis under RCW 34.05.328 (5)(b)(iv), as they clarify the language in the rule without changing its effect.

M. <u>NEW WAC 246-341-0715 Crisis support services-Service standards.</u>

Description: The current rule requires crisis substance use disorder facilities to maintain a list of referral resources. The rule extends this requirement to mental health crisis services in order to support co-occurring services.

The costs/benefits of this rule change are captured under Section 5 I.

Description: Current rule requires substance use disorder (SUD) crisis staff to have 40 hours of SUD training for staff providing SUD crisis services. The rule removes the 40-hour requirement and replaces it with training staff to identify and respond to individuals in crisis.

The costs/benefits of this rule change are captured under Section 5 J.

Description: Current rule requires agencies providing mental health crisis services to follow general requirements including:

- Assure communication with SUD treatment provider as necessary
- Remain with the individual in crisis until resolved or referred
- Refer and transport individuals as necessary
- Document crisis plan if available
- Provide for safety of staff going to personal home or nonpublic setting

The rule extends these requirements to SUD crisis support services.

Four survey respondents answered that they provide SUD information and crisis services. All four answered this question.

Cost: The department anticipated that this change would result in potential costs associated with increased documentation, care coordination, transportation means and implementation of safety standards for staff. However, survey respondents (4/4) indicated that this would be a cost neutral or insignificant change. One agency (1/4) made the following statement about this rule change:

- *Agency built crisis policies to reflect higher documentation standards identified within MH crisis response.*

Benefit: This rule change extends safety measures for both agency staff and individuals receiving substance use disorder crisis support services.

Description: Current rules do not allow DUI assessments to be provided via telehealth and are not clear whether crisis services or psychiatric medication monitoring can be provided via telehealth. The rule allows the use of synchronous video conferencing to provide DUI assessments and clarifies telehealth can be used for crisis services or psychiatric medication monitoring.

The costs/benefits of this rule change are captured under Section 5 L.

Additionally, the department deleted the reference to RCW 71.05.710 in subsection (2)(c), as that statute is specific to home visits by mental health professionals and this rule has broader applicability. This change is exempt from analysis under RCW 34.05.328 (5)(b)(iv), as it clarifies the language in the rule without changing its effect.

N. <u>WAC 246-341-0730 Clubhouses-Certification standards.</u>

Description: Current rule implies that a clubhouse must have Mental Health Professional (MHP) clinical supervision. The rule clarifies that a clubhouse that does not provide other certified services is not required to operate under the supervision of an MHP.

Two survey respondents answered that they are certified to provide clubhouse services. Both answered this question.

Cost: No costs were indicated by survey respondents (0/2) for this rule change.

Benefit: The department anticipated that this change would result in a cost savings since agencies would not have to hire or contract with an MHP. By decreasing the costs to operate a Clubhouse, more providers may be able to provide the service. Those that currently provide this service may use the cost-savings to improve or add to the services they currently offer.

One survey respondent (1/2) estimated a one-time savings of $100,000 and recurrent savings of $100,000. This agency made the following statement about savings:

- *Providing Clubhouse services allows us to not have to hire an MHP, however, since we bill Medicaid, it is required. The billing requirements and the DOH requirements are not in alignment.*

Another agency indicated that this change would result in savings of significant cost in staff time.

The department also clarified, in subsection (2)(e), that clubhouses must be comprised of structured activities "in accordance with RCW 71.24.650(5)", which includes the activities that were listed in (2)(e)(i) through (2)(e)(vii). This change is exempt from analysis under RCW 34.05.328 (5)(b)(iv), as it clarifies the language in the rule without changing its effect.

O. <u>NEW WAC 246-341-0739 Psychiatric medication management services-Service standards.</u>

Description: Current rules do not clearly state that agencies providing medication management or medication monitoring are not required to complete an individual service plan (ISP). The rule specifies that an individual service plan is not required when providing psychiatric medication monitoring and management.

The costs/benefits of this rule change are captured under Section 5 L.

P. WAC 246-341-0820 Driving under the influence (DUI) substance use disorder assessment services-Service standards.

Description: Current rules do not allow DUI assessments to be provided via telehealth and are not clear whether crisis services or psychiatric medication monitoring can be provided via telehealth. The rule allows the use of synchronous video conferencing to provide DUI assessments and clarifies telehealth can be used for crisis services or psychiatric medication monitoring.

The costs/benefits of this rule change are captured under Section 5 L.

Description: The rule would allow agencies providing DUI assessment services to conduct assessments using telehealth; however, the agencies will need to document for the courts whether the assessment was conducted via telehealth or in-person.

Five survey respondents answered that they provide DUI assessment services. All five answered this question.

Cost: The department anticipated some costs for agencies to provide the additional documentation to courts. One survey respondent (1/5) estimated a one-time cost of $500, which "*would be the costs to include this information in the assessment.*" Other agencies (4/5) indicated that this would be a cost neutral or insignificant change. The following statement about this rule change was shared by an agency:

- *The agency already captures within the EHR whether any service is conducted in-person or via telehealth.*

Benefit: This rule change will result in the courts knowing whether the assessment was conducted via telehealth and potentially choosing additional in-person assessment if they feel it is necessary.

Q. NEW WAC 246-341-0901 Outpatient behavioral health crisis outreach, observation and intervention services-Certification standards.

Description: Current rule requires agencies providing mental health crisis services to follow general requirements including:

- Assure communication with SUD treatment provider as necessary
- Remain with the individual in crisis until resolved or referred
- Refer and transport individuals as necessary
- Document crisis plan if available

- Provide for safety of staff going to personal home or nonpublic setting

The rule extends these requirements to SUD crisis support services.

The costs/benefits of this rule change are captured under Section 5 M.

Description: Current rule only states that an MHP may accompany a peer to an initial crisis visit. The rule adds a "professional appropriately credentialed to provide substance use disorder treatments as appropriate to the crisis" as a type of professional that can accompany the peer counselor to the initial SUD crisis visit.

Seven survey respondents answered that they are certified to provide mental health crisis outreach services. Five of them answered this question. The response provided by one agency was excluded from this analysis. In the explanation of benefits, the agency stated that the rule change would enable them to hire certified peers, which is an inaccurate interpretation of the rule.

Cost: The department anticipated that this rule change would be cost neutral or result in a cost savings because agencies may utilize a substance use disorder professional (SUDP) or substance use disorder professional trainee (SUDPT), which may cost less than an MHP. One survey respondent (1/4) estimated a one-time cost of $200. Other agencies (3/4) indicated that this would be a cost neutral or insignificant change. The following statement about this rule change was shared by an agency:

- *Adding this type of credentialed staff to the team for this purpose would be cost neutral.*

Benefit: This rule change allows agencies more flexibility in which provider type can accompany peer counselors, which may increase availability for crisis visits, and help address staffing shortages, all of which have the potential to increase access to care.

Description: Current rules do not allow DUI assessments to be provided via telehealth and are not clear whether crisis services or psychiatric medication monitoring can be provided via telehealth. The rule allows the use of synchronous video conferencing to provide DUI assessments and clarifies telehealth can be used for crisis services or psychiatric medication monitoring.

The costs/benefits of this rule change are captured under Section 5 L.

The department also made the following clarifying changes to this section:

- Clarified that crisis services can be provided within a behavioral health agency (BHA) in order to account for the 23-hour model of crisis care.

- Updated the terminology in subsection (7)(d) from “private home” and “private location” to “personal residence” and “nonpublic location”, to be consistent with the rest of the subsection.
- In subsection (7)(c), deleted the reference to RCW 71.05.710, as that statute is specific to home visits by mental health professionals and this rule has broader applicability.

These changes are exempt from analysis under RCW 34.05.328 (5)(b)(iv), as they clarify the language in the rule without changing its effect.

R. <u>NEW WAC 246-341-1105 Behavioral health residential and inpatient intervention, assessment, and treatment services-Certification standards.</u>

Description: Current rules require SUD agencies who serve youth to meet staff training requirements. These requirements include verbal de-escalation; crisis intervention; emotional regulation; suicide assessment and intervention; conflict management; management of assaultive behavior; use of therapeutic physical intervention techniques; and emergency procedures. They also require the agencies to provide academic education, leisure activities, structured recreation, and group meetings, as well as to document release forms, referrals, and problems identified in the youth assessment. The rule extends these requirements to mental health facilities serving youth.

Five survey respondents answered that they are certified to provide mental health residential or inpatient services. Only one answered this question. The other four respondents indicated that this question did not apply to their agency, with one stating that they do not serve youth.

Cost: The department anticipated potential significant costs. However, during workshops with interested parties, participants indicated that residential mental health agencies were already meeting these requirements or that the youth were not in services long enough for these requirements to apply to their agency. One survey respondent (1/1) estimated a one-time cost of $400, but no further explanation was provided.

Benefit: This rule change assures that youth who are in residential mental health services will receive services from individuals trained in important techniques and interventions, receive academic education, leisure and structured recreation, and have referrals and release forms documented in their medical record.

Description: Current rule requires SUD agencies serving youth to provide academic education. The rule requires the agency to coordinate with the youth’s school district, putting the onus on the school district.

Three survey respondents answered that they provide SUD residential services. Only one answered this question.

Cost: Most survey respondents (18/21) did not answer this question or stated that it did not apply to their agency (2/21). One agency (1/3) indicated that this would be a cost neutral or insignificant change.

Benefit: This rule change will help keep the youth who are receiving this service connected with their school district. It also aligns with the responsibility of the school district to provide for the education of students in their district.

The department also made the following clarifying changes to this section:

- Clarified that agencies certified under this section provide voluntary behavioral health (BH) intervention, assessment, and treatment services in a residential facility or hospital.
- Clarified that the services included under this certification are adult residential and inpatient SUD treatment, youth residential and inpatient SUD treatment, adult residential and inpatient mental health treatment and youth residential and inpatient mental health treatment.
- Moved language pertaining to seclusion and restraint to WAC 246-341-1131.
- Clarified that the provision of academic education, leisure activities, structured recreation and group meetings can be otherwise advised by the treatment provider.
- Clarified that a youth who turns 18 while admitted to a youth facility may continue to receive services if it is in their best interest and the agency can meet the requirements for serving both youth and adults.
- In subsection (4)(c), clarified that when the discharge is unplanned and the parent or legal guardian is unavailable, the agency must contact the "relevant state's child protective services."

These changes are exempt from analysis under RCW 34.05.328 (5)(b)(iv), as they clarify the language in the rule without changing its effect.

S. <u>NEW WAC 246-341-1300 Applied behavior analysis mental health services-Certification standards.</u>

Description: Current rule requires all Applied Behavior Analysis (ABA) agencies to follow the requirements outlined in the Washington State Health Care Authority (HCA) rules in Chapter 182-531A WAC for Medicaid billing purposes. The rules apply this requirement only to ABA agencies billing Medicaid.

None of the survey participants indicated that they provide ABA services.

Cost: The department does not anticipate costs resulting from this rule change.

Benefit: As a result of this rule change, ABA agencies that choose not to bill Medicaid will not be required to follow additional Medicaid billing requirements. This allows agencies to provide services to adults in addition to children.

The department also made the following clarifying changes to this section:

- Removed the term "children" from the introduction to the service and replaced it with "individuals." Interested parties suggested removing age limits, as applied behavior analysis (ABA) can apply to all age groups.
- Referenced statute (RCW 18.380.010) in the introduction to the service.
- Removed language pertaining to autism spectrum disorders or other developmental disabilities.
- Removed language pertaining to the six domains that ABA services address.
- Incorporated language from WAC 246-341-0718 for the requirements in subsection (1). These requirements were further revised to be ABA-specific.
- Revised the terminology in subsection (4) and added licensed assistant behavior analyst to the list of professions.
- Clarified that an agency certified to provide ABA services must employ a licensed behavior analyst that meets the professional requirements in chapter 246-805 WAC.
- Clarified that all staff providing ABA services must be credentialed and supervised according to chapter 18.830 RCW and chapter 246-805 WAC.
- Removed the professional requirements in subsections (5)(a) and (b), (6) and (7), since the professions WAC is referenced above.
- Removed subsection (8), which stated that to maintain department program-specific certification to provide ABA services, an agency must continue to ensure that the requirements in this section are met. This language is not needed since this requirement is already applicable to all BHA certifications.

These changes are exempt from analysis under RCW 34.05.328 (5)(b)(iv), as they clarify the language in the rule without changing its effect.

T. All WAC Sections: Policies and Procedures

Description: Agency policies and procedures are required to reflect or reference the most current WAC language. This rulemaking project amends nearly every WAC section and will most likely require agencies to update their policies and procedures.

This question was applicable to all 21 survey respondents. Fourteen respondents provided answers to this question.

Cost: There was significant variability in the cost estimates provided by each agency. The median estimate for one-time or initial costs to update policies/procedures was $3,200, whereas the median estimate for recurrent costs was $0[1]. Responses for each of the (11/14) agencies that indicated costs are summarized below.

SA Table 2. Summary of costs associated with policies and procedures

One-Time Cost Estimate	Recurrent Cost Estimate	Comments
$200-$300	$200-$300	*Employee time to update the policies and educate staff on the*

[1] Responses that indicated a neutral or insignificant change were included in the calculation of the median.

		policies.
$1,000	Not provided	*Considering the amount of time and effort of the Director to go through and re-word the majority of the policies and procedures. That is a low- ball estimate.*
Not provided	$1,050	*This is the cost for staff to read over and update policies as needed.*
$1,600	Not provided	*Professional staff time 40 Hrs X $40/Hr.*
$4,800	$0	*Time for Policy Director to review WAC changes and make substantial revisions to policy manual.*
$5,000	$1,500	*Typically this will require reporting changes in our electronic health record.*
$10,000	No change ($10,000)	*Front end costs of reviewing and updating policies, workflows etc. and then providing sufficient training to effected staff. Likely off-set by decreased complexity in the system, which would be realized over time.*
Not provided	$10,000	*As an OTP, we are required to review and update policies and procedures and associated forms annually. This would be a major undertaking under stable circumstances. However, with COVID related policy changes and the effort to come up to federal OTP standards through ongoing plans of correction, this is more of a year round undertaking. It involves all leadership staff - Medical Director, Program Sponsor, Quality Improvement Coordinator, Clinic Coordinator, and Nurse Supervisor.*
$15,000	$0	*We would have to assemble a team to review all P&Ps to align with the new WACs. This team would likely consist of 5-6 people who would meet bimonthly and also do work individually to bring back to the committee. So this is an estimate of the cost of inhouse time/cost.*
$27,000	$0	*We have around 100 policies that are linked to this WAC which will need to be updated, reviewed by many, etc. The one-time cost is higher, but after would not add.*
$150,000	Not provided	*Reviewing and updating all policies and procedures will take a significant amount of time. Once the P&P are updated, then all audit tools must be updated, and all staff must be trained on the new P&P.*

Additionally, three agencies (3/14) indicated that this would be a neutral or insignificant change.

Cost Benefit Summary

Costs for certain rule changes may be reflected in more than one WAC section. In SA Table 3 below, costs are stated once to avoid duplication and provide a more accurate analysis. Therefore, the following WAC sections are not listed in the cost benefit summary:

- WAC 246-341-0300 Agency licensure and certification-General information.
- WAC 246-341-0310 Agency licensure and certification-Deeming.
- WAC 246-341-0370 Agency licensure and certification-Appealing a department decision.
- WAC 246-341-0600 Individual rights.
- NEW WAC 246-341-0739 Psychiatric medication management services-Service standards.

SA Table 3. Summary of Section 5; probable cost(s) and benefit(s)

WAC Section and Title	Probable One-Time Cost(s) (Range)	Probable Recurrent Cost(s) (Range)	Probable Benefit(s)
WAC 246-341-0110 Behavioral health-Available certifications.	Cost neutral or insignificant up to $2,000	Cost neutral or insignificant up to $2,000	- The rule change will reduce administrative burden and provide agencies with greater flexibility to adjust to the needs of the communities they serve. - Probable recurrent savings between $200 and $5,000.
WAC 246-341-0335 Agency licensure and certification-Denials, suspensions, revocations, and penalties.	Cost neutral or insignificant	Cost neutral or insignificant	The rule change will limit the regulatory impact to behavioral health agencies and allows for continued access to vital behavioral health services.
WAC 246-341-0342 Agency licensure and certification-Off-site locations.	Cost neutral or insignificant up to $1,000,000	Cost neutral or insignificant up to $300,000	- The rule change will allow BHAs and OTPs to provide services as an extension of their existing BHA license without additional fees and will help increase access to these services for people in rural and underserved areas. - Probable one-time savings of $500 and recurrent savings of $200,000.
WAC 246-341-0420 Agency administration-Policies and procedures.	Cost neutral or insignificant up to $10,000	Cost neutral or insignificant up to $5,000	The rule change will ensure the rights of individuals to make mental health advance directives as required by state law.

WAC 246-341-0515 Personnel-Agency staff requirements.	Cost neutral or insignificant	Cost neutral or insignificant	Probable recurrent savings of $2,340.
WAC 246-341-0640 Individual service record content.	Cost neutral or insignificant	Cost neutral or insignificant	The rule change will ensure that agencies are in compliance with the Medicaid billing requirement and the licensing WAC.
NEW WAC 246-341-0660 Behavioral health information and assistance-Certification standards.	Cost neutral or insignificant	Cost neutral or insignificant	The rule change supports the alignment of mental health and substance use disorder requirements and assures that agencies providing mental health crisis services have a list of referral resources so that individuals can be referred for services efficiently.
NEW WAC 246-341-0670 Crisis telephone support services-Service standards.	Cost neutral or insignificant up to $400	Cost neutral or insignificant	The rule changes: - Support the coordination of care for individuals receiving SUD services, resulting in improved health outcomes. - Align mental health and substance use disorder requirements. - Identify a more relevant type of training for SUD crisis staff. - May result in recurrent savings of $50,400 in training time.
WAC 246-341-0700 Behavioral health support services-Certification standards.	Cost neutral or insignificant	Cost neutral or insignificant up to $70,000	The rule change allows for a more individualized approach to supporting individuals in crisis.
WAC 246-341-0713 Psychiatric medication monitoring services-Service standards.	Cost neutral or insignificant up to $2,000	Cost neutral or insignificant up to $500	The rule changes: - Allow for increased access to patients. - May result in one-time savings between $100,000 and $250,000. - May result in significant savings in staff time.
NEW WAC 246-341-0715 Crisis support services-	Cost neutral or insignificant	Cost neutral or insignificant	The rule change extends safety measures for both agency staff and individuals receiving substance use

Service standards.			disorder crisis support services.
WAC 246-341-0730 Clubhouses-Certification standards.	No costs were indicated	No costs were indicated	The rule change: - Will decrease the costs to operate a Clubhouse, since agencies will no longer have to hire or contract with an MHP. - May result in one-time savings of $100,000 and recurrent savings of $100,000. - May result in significant savings in staff time.
WAC 246-341-0820 Driving under the influence (DUI) substance use disorder assessment services-Service standards.	Cost neutral or insignificant up to $500	Cost neutral or insignificant	The rule change will result in the courts knowing whether a DUI assessment was conducted via telehealth. They may then choose an additional in-person assessment if they feel it is necessary.
NEW WAC 246-341-0901 Outpatient behavioral health crisis outreach, observation and intervention services-Certification standards	Cost neutral or insignificant up to $200	Cost neutral or insignificant	The rule change allows agencies more flexibility in which provider type can accompany peer counselors, which may increase availability for crisis visits, and help address staffing shortages, all of which have the potential to increase access to care.
NEW WAC 246-341-1105 Behavioral health residential and inpatient intervention, assessment, and treatment services-Certification standards.	Cost neutral or insignificant up to $400	Cost neutral or insignificant	The rule changes: - Assure that youth who are receiving residential mental health services are receiving those services from individuals trained in important techniques and interventions. - Assure that youth receive academic education, leisure and structured recreation. - Assure that referrals and release forms are documented. - Assure that youth who are receiving services from SUD agencies are connected with their school district.

NEW WAC 246-341-1300 Applied behavior analysis mental health services-Certification standards.	The department does not anticipate costs for this rule change.	The department does not anticipate costs for this rule change.	As a result of the rule change, ABA agencies that choose not to bill Medicaid will not be required to follow additional Medicaid billing requirements. This allows agencies to provide services to adults in addition to children.
All WAC Sections: Policies and Procedures	Cost neutral or insignificant up to $150,000 Median: $3,200	Cost neutral or insignificant up to $10,000 Median: $0	Requiring each facility to have up-to-date policies and procedures ensures that: - There is consistency across different types of facilities regulated by the department. - Facilities can customize solutions to department requirements. - Department investigators can quickly and accurately assess whether the facility is practicing in accordance with their policies and procedures. - The facility is following the latest laws and rules. - Patients have confidence that facilities are aware of and adequately following health and safety requirements.

Determination

It was determined by the department that the probable benefits of the rule are greater than the probable costs.

SECTION 6:

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.

Over the sixteen weeks of rules workshops, the department continually assessed interested party and partner feedback, and sought the advice of internal and external partners on the reduction and simplification of requirements. The following areas are some examples.

Certification categories: Existing rules require a separate certification for every service being provided which means that there are nearly 50 different certifications for agencies to choose from. Workshop participants expressed interest in combining certain services that were commonly provided within a single agency, such as individual mental health counseling and group mental health therapy, so that only a single certification would be needed to provide the services. As the workgroup explored this concept it was determined that in addition to combining some services, the best way to reduce the burden on agencies providing multiple services would be to create broader certification categories, which would allow agencies the flexibility to provide multiple types of services under a single certification. Additionally, the broader certifications integrate mental health and substance use disorder services, allowing agencies to provide co-occurring services under a single certification category. The rule reduces the number of certifications to less than twenty and allows agencies the ability to easily modify their services under the broader certification category to meet the needs of their community while still allowing the department to maintain the same level of regulatory oversight of the services.

Nesting: In addition to broadening the certification categories it was suggested that agencies certified for a higher level of care should automatically be able to provide a lower level of care without having to obtain a separate certification. For example, if certified for residential treatment the agency should be able to provide outpatient treatment without additional certification. As this concept was explored it was apparent that it was causing confusion. Knowing what services are being provided by agencies might become difficult and impact data as well as the department's ability to thoroughly regulate agencies. A poll was used during a workshop to gauge the participants' desire to move forward with this idea or table it for the time being. The poll was a 50/50 split, so the department made the decision to revisit this concept during phase three rulemaking in 2022.

Clubhouse and consumer-run organizations: The department held a focus group specifically for agencies providing or interested in providing Clubhouse services. The department was aware, based on proposed legislation that didn't pass and feedback from HCA, that Clubhouse providers believed the rules to be a barrier to providing this service in a way that aligned with the international clubhouse model. During the focus group there were three main recommendations. First, revise the rules to make it clear that Clubhouses do not provide clinical services. Second, create separation of Clubhouse services that are true to the international clubhouse model from other versions of clubhouse or consumer-run organization services. And finally, add in more standards that reflect the international clubhouse model. The rules do include revisions that reflect that the Clubhouse is non-clinical services. Additionally, rule language was also drafted to separate true Clubhouse services from other consumer-run organizations and include specific international clubhouse model standards. When the language was shared with HCA partners there was a request that the language not be included at this time as a consultant was hired to work with clubhouse and consumer-run organizations on identifying policy barriers for both licensure and reimbursement. The department decided to save the draft language until the consultant finishes the research on this topic, which can perhaps further inform the draft language.

Academic education: To support the delivery of co-occuring services, the workgroup aimed to align requirements for mental health and substance use disorder services wherever possible. Residential substance use disorder services had specific requirements regarding provision of academic education when providing youth services. Most workshop participants agreed that this

should also be a requirement for residential mental health programs serving youth. Rather than simply adding the existing language to apply to residential mental health agencies the participants recommended a "meet in the middle" approach. This approach entails revising the academic requirements, lessening the burden on agencies, and then applying the revised requirements to both mental health and substance use disorder residential programs.

Driving Under the Influence telehealth: Workshop participants desired to support the use of telehealth throughout the rules; however, there was hesitancy on whether use of telehealth to conduct DUI assessments was appropriate. As a result, the department planned to keep the requirement of in-person DUI assessments. The Association of Addiction Professionals (AAP) and the Washington Impaired Driving Advisory Committee (WIDAC) were consulted on this topic and indicated support for the use of telehealth (synchronous video) with a recommendation that the assessment documentation include whether it was conducted in-person or via telehealth. Once this information was shared with workshop participants there was more support for the use of telehealth and the rule was drafted to reflect the recommendation from AAP and WIDAC.

Crisis observation: The department has seen increasing interest in agencies providing 23-hour crisis services; however, the department did not have a certification category that fit this model well. As a result, these programs have been certified as "crisis outreach", which are typically described as services that meet a person where they are in the community. It was proposed that we separate this model of service from the "crisis outreach" certification; however, no specific regulatory requirements were agreed upon for this service. Since the service did not have unique requirements proposed and the existing requirements for crisis observation would suffice, it was determined to revise the title and description of "crisis outreach" services to be inclusive of 23-hour crisis services provided within an agency. The title for the certification is "crisis outreach, observation and intervention".

40 hour Substance Use Disorder education: Workshop participants brought to the department's attention that there are several places in rule related to SUD crisis services that require certain staff to have 40 hours of substance use disorder education. The concern stated was that designated crisis responders aren't even required to have 40 hours of SUD education and that 40 hours is an arbitrary number. The initial recommendation was to require education of certain competencies rather than a certain number of hours; however, there was no agreement on what those competencies should include. Eventually the participants recommended that the components should include education on identifying individuals in crisis and how to respond and apply this to both mental health and SUD crisis services. The thought is that this education is better aligned with the service being provided, allows agencies to determine the appropriate amount of education for each individual, and supports integration of mental health and SUD.

SECTION 7:

Determine 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 rules do not require those to whom it applies to take an action that violates requirements of another federal or state law.

SECTION 8:

Determine 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 rules do not impose more stringent performance requirements on private entities.

SECTION 9:

Determine 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 rules do not differ from any federal regulation or statute applicable to the same activity or subject matter.

SECTION 10:

Demonstrate 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.

The rules have been part of ongoing coordination efforts between the department, the Department of Social and Health Services, the Health Care Authority, the Department of Children, Youth, and Families, our Legislative and Governor's Office partners, and the federal Substance Abuse and Mental Health Services Administration to ensure that the intent of the statutes have been carried out appropriately. In addition to these coordination efforts, and having participation from some of our sister agencies in our rules workshops (including over 20 Health Care Authority staff members), the department hosts a monthly interagency coordination meeting related to behavioral health agencies where these issues are discussed with our regulatory and policy partners.