

**Department of Health
Concise Explanatory Statement – Fee Increases
Adopted July 7, 2008**

- 246-802-990 – Acupuncture fees and renewal cycle
- 246-808-990 – Chiropractic fees and renewal cycle
- 246-811-990 – Chemical Dependency Counselor fees and renewal cycle
- 246-812-990 – Denturist fees and renewal cycle
- 246-815-990 – Dental Hygiene fees and renewal cycle
- 246-826-990 – Health Care Assistant fees and renewal cycle
- 246-828-990 – Hearing Instrument Fitter/Dispenser, Audiologist, and Speech Language Pathologist
- 246-830-990 – Massage Therapist fees and renewal cycle
- 246-836-990 – Naturopathic Physician fees and renewal cycle
- 246-840-990 – Fees and renewal cycle (RN, LPN, & ARNP)
- 246-841-990 – Nursing Assistant fees and renewal cycle
- 246-843-990 – Nursing Home Administrator fees and renewal cycle
- 246-847-990 – Occupational Therapy fees and renewal cycle
- 246-851-990 – Optometry fees and renewal cycle
- 246-853-990 – Osteopathic fees and renewal cycle
- 246-907-030 – Pharmaceutical licensing periods and fees – Fees and renewal cycle
- 246-915-990 – Physical Therapy fees and renewal cycle
- 246-918-990 – Physician Assistant fees and renewal
- 246-919-990 – Physician and Surgeon fees and renewal
- 246-922-990 – Podiatry fees and renewal cycle
- 246-924-990 – Psychology fees and renewal cycle
- 246-930-990 – Fees and renewal cycle (Sex Offender Treatment Provider & Affiliate)

Reason to Adopt These Rules:

The rules increase fees for the listed professions by no more than the amount approved by the Legislature in ESHB2687 (Chapter 329 Laws 2008) (legislative approval required by Initiative-960). Fees were temporarily reduced for many professions in July 2005. In 2007 some of these fees were returned to the prior level. These rules raise the fees to a level that will cover the current costs to regulate the professions. The rules also remove fees that no longer exist and for some professions add a fee up to \$25 for online access to University of Washington Library resources (ESSB5930, Chapter 259 Laws of 2007). In addition, the rules change the Denturist renewal cycle from biennially to annually.

The cost to regulate health care providers is about \$27 million each year. Increases in regulatory activities based on new laws, court cases, and in disciplinary actions has made it necessary for the Department to request an increase in fees. For example, from the 2001-2003 to the 2005-2007 biennium, authorized investigations increased 44% and disciplinary actions increased 50%. During this same biennium, revenue increased approximately 7% while expenditures increased about 61%.

Without an increase in fees, or alternative funding, the programs will not be able to maintain current levels of service. Credentialing, background checks, investigations, and disciplinary activities will decrease to a level that could place patients at risk and create barriers to receiving health care. The adopted rules are effective immediately upon filing and the increased fees go into effect August 1, 2008.

Changes in Adopted Rules:

The professions listed below were listed in the proposed rules; but are not included in these adopted rules. These professions will be filed and adopted separately. The Department received a large number of concerns about the financial burden of the proposed increases on these providers. The Department is considering changes in order to decrease the burden, but still maintain a planned fee structure that brings the health profession accounts to a level that they are self-supporting. The fees for the X-ray Technician are in the same WAC as the fees for the Radiologic Technologist. For this reason, the profession is not included in this CR103 and the fee increases will be filed when the increases are filed for the Radiologic Technologist.

WAC	Profession
246-817-990	Dental
246-809-990	Marriage & Family Therapist
246-809-990	Mental Health Counselor
246-926-990	Radiologic Technologist and X-ray Technician
246-927-990	Recreational Therapist
246-810-990	Registered Counselor
246-928-990	Respiratory Therapist
246-809-990	Social Worker

Comments Received and Department Responses:

The Department received over 600 emails, comments, phone calls, and letters about the increase in fees. The Department held one hearing for all secretary and board and commission programs. At the hearing we received comments from providers, and association and union representatives who provided comments on behalf of their constituents. Radiologic Technologists, Respiratory Therapists, Mental Health Counselors, Social Workers, and Dentists submitted most of the comments. The comments all had similar messages and are summarized by the general or profession-specific message:

General Comments

Comment: The proposed increases are excessive. Increasing fees will be burdensome during this time of economic hardship, particularly for lower paid professions. The Department should not increase fees at this time, or consider implementing smaller increases over time rather than a large one-time increase, or reduce fees again after the deficit is reduced.

Response: The Department recognizes that an increase in fees may be difficult for some providers. RCW 43.70.250 requires that the cost of operating each profession be fully supported by fees paid from each profession's members. The Department must increase fees in order to keep the programs solvent. Without an increase in fees, the programs will not be able to maintain current levels of service. Credentialing, background checks, investigations, and disciplinary activities will decrease to a level that could place patients at risk and create barriers to receiving health care.

Increased costs are a result of new laws, court cases, and disciplinary trends. If the trends or laws change, the changes will be included in the budget projections and the Department will adjust fees accordingly. If the fund is not overspent, and revenue exceeds the spending amount the legislature approved, the Department will decrease fees.

These profession fees are adopted without changes:

- Acupuncture
- Chemical Dependency Counselor
- Chiropractic and Chiropractic X-Ray Technician
- Dental Hygiene
- Denturist
- Health Care Assistant
- Hearing Instrument Fitter/Dispenser, Audiologist, and Speech Language Pathologist
- Massage Practitioner
- Naturopathic Physician
- Nursing Assistant
- Nursing Home Administrator
- Optometry
- Nursing (Registered Nurse, License Practical Nurse, and Advanced Registered Nurse Provider)
- Occupational Therapist
- Osteopathic Physician & Surgeon and Osteopathic Physician Assistant
- Pharmacist, Pharmacy Location, and Pharmacy Vendor
- Physical Therapist
- Physician and Physician Assistant
- Podiatry
- Psychology
- Sex Offender Treatment Provider and Affiliate

In response to the large number of concerns raised during the rulemaking process, the Department is considering changes to the proposed rules for the professions listed below. These professions have the highest level of increases. The Department will file the fee increases for these professions separately. The fees for the X-ray Technician are within the same WAC as the Radiologic Technologist and must be filed at the same time.

WAC	Profession
246-817-990	Dental
246-809-990	Marriage & Family Therapist
246-809-990	Mental Health Counselor
246-926-990	Radiologic Technologist and X-ray Technician
246-927-990	Recreational Therapist
246-810-990	Registered Counselor
246-928-990	Respiratory Therapist
246-809-990	Social Worker

Comment: *The Department should consider the following when determining fees:*

- *Average income, insurance reimbursement rates, costs for continuing education, and level of education/degree.*
- *Creating more equity across similar professions and other states.*
- *Funding from different revenue sources to offset costs.*
- *Moving to a two-year renewal cycle for those professions on a yearly cycle.*

Response: Under current law, the Department is not able to consider these variables when determining fee amounts. The Department can only consider revenue and expenditures when determining the amount of the fees. In order to meet the requirements of RCW 43.70.250, the Department must spread the costs of running the program to the providers in that program. Changing the fee structure to allow more flexibility and equity across professions requires legislative changes.

Comment: *Increased fees may be a potential barrier to entering or staying in professions.*

Response: Current law, RCW 43.70.250, requires that the cost of operating each profession be fully supported by fees paid from each profession's members. The Department must increase fees in order to keep the programs solvent. Without an increase in fees, the programs will not be able to maintain current levels of service. Credentialing, background checks, investigations, and disciplinary activities will decrease to a level that could place patients at risk and create barriers to receiving health care.

Comment: Providers should not carry the burden of discipline costs for those few providers not following the laws. The Department should make the disciplined provider carry the burden of the disciplinary costs.

Response: Current laws, RCW 18.130.160 and RCW 18.130.172, limit the amount of money the Department can charge to a single provider for fines and cost reimbursement to investigate and process complaints. In order to offset the costs, and for the programs to be fully self-supporting per RCW 43.70.250, the costs not covered through fines must be recovered through fees.

Comment: The Department should charge out-of-state applicants the cost of background checks instead of distributing it among all providers.

Response: The Department is not able to consider this suggestion at this time. The cost of equipment, staffing, and disciplinary activities based on positive checks would create a much higher application fee. A higher application fee could create a barrier to receive a license in this state and could discourage potential applicants from seeking state licensure.

Comment: The Department should consider cutting administrative costs instead of raising fees. In addition, they should implement on-line renewals and credit card payments in order to save administrative costs.

Response: The adopted fees include administrative costs that are already at reduced operating levels. The Department, and the boards and commissions, have decreased other administrative costs through several measures including: combining rules hearings with regularly scheduled meetings, holding meetings in free locations, holding fewer meetings, and doing business through conference calls when appropriate. In addition, email is used whenever possible to reduce communication costs.

The Department has begun the process to implement on-line renewals and credit card payments, which is included in the fee projections.

Comment: The Department should raise the fees for applications and lower the fees for renewals. Providers expect to pay a higher fee when applying for licensure than they do for renewing their license.

Response: Each year the Department issues about 200,000 renewals, receives about 50,000 new applications, and issues about 35,000 new credentials. Increasing the application fees to a level that would decrease the renewal fees would be extreme for most professions and would not achieve the funding needed. In addition, an increased application fee may present a greater barrier to entering a profession than the increase in renewal fees.

Comment: The Department should reduce the planned 20% reserve in the health professions account and lower the fees. The regulations should also change to allow the Department to maintain funds above the allotted amount in order to keep a reserve to cover unplanned increases in costs.

Response: The fee increases do not create a 20% reserve in the health professions account. It is prudent fiscal management to maintain a positive balance in the health professions account in order to avoid sharp increases again in the future. If the fund balances achieve a 20% reserve and the accounts are not overspent, the Department will be able to decrease fees.

Under current law, the Department is not able to change the limitation on allotment amounts. The Legislature approves the allotment amount in the operating and supplemental budget.

Comment: The Department should consider reduced fees for disabled, volunteer, non-profit, part-time, and senior-age providers.

Response: The Department is not able to address this suggestion at this time. Changes in the fee structure require legislative changes. All providers licensed in Washington are subject to the same laws and regulations. Costs to license and discipline are the same for all providers. Some professions do offer a retired active credential status.

Comment: The Department should change the renewal cycle to coincide with the application period instead of the practitioner's birth date. It is a burden to pay an application fee and a renewal fee within a short time-period.

Response: The Department is not able to consider this suggestion at this time. A change this significant would require costly changes to the licensing system, which could result in even higher fee increases. The fee renewal structure is modeled after other state agencies and other states. WAC 246-12-020 provides that if an initial credential is issued within 90 days of the practitioner's birthday, the credential does not expire until the practitioner's next birthday.

Comment: The Department should increase communication on issues affecting the professions. There has been no communication to providers regarding disciplinary activities and increasing costs.

Response: Chapter 18.130 RCW requires the Department to complete a biennial report on disciplinary activities. The Department sends the report to the list-servs for every profession and posts it on the public website. Chapter 18.130 RCW requires the Department to issue press releases on all disciplinary actions taken against a provider.

As a public agency, the Department is dedicated to serving patients and providers and supports open communication with those we serve. In order to promote better communication, we are exploring new options to communicate with the public. We encourage providers to contact the

program offices for questions and information, visit the website frequently, and join the list-servs for regular updates on program activities.

The Customer Service Center number is 360-236-4700

The Department's web site is: <http://www.doh.wa.gov>

The Health Systems Quality Assurance web site is: <http://www.doh.wa.gov/hsqa/>

The Washington State government web site is: <http://access.wa.gov/>

Interested persons can join list servs at: <http://listserv.wa.gov/cgi-bin/wa?INDEX>

Comment: The new requirement for many providers to pay for access to the University of Washington (UW) online journals should be voluntary, and the fee should be the same for all providers. Some providers with more than one type of credential, or are employees of the UW, will have to pay the access fee more than once. The Department should also consider evidence-based continuing education requirements as an alternate way of increasing provider knowledge.

Response: The Department is not able to change the UW fee requirements. ESSB5930 (Chapter 259 Laws of 2007) requires the Department to collect a fee on each license listed below. This law did not make the fee voluntary, include a provision for individuals holding multiple licenses, or provide an exception for UW employees who hold a health care credential. The Legislature approved the amount of the fees for this access in the 2008 budget bill. Changing the access fee requires legislation.

- Acupuncturist
- Chiropractor
- Clinical Social Worker
- Massage Practitioner
- Mental Health Counselor
- Naturopathic Physician
- Optometrist
- Osteopathic Physician & Physician Assistant
- Physician and Physician Assistant
- Podiatrist
- Psychologist
- Registered Nurse

Comment: The rulemaking process was not long enough and did not provide enough time for comment or warning of the potential increases.

Response: Chapter 34.05 RCW (Administrative Procedure Act) governs the rulemaking activities for all state agencies. RCW 34.05.310(4)(f) allows the Department to begin the rulemaking process for fees at the notice of proposed rules stage (CR102). RCW 34.05.320 requires that the Department give at least twenty days notice before the rule hearing.

Notice of the proposed rules was filed with the Code Reviser on May 6, 2008 and published in the Washington State Registry on May 21, 2008. The Department distributed notice of the proposed rules and public hearing to the professions' list-servs and began accepting comments on May 9, 2008. The Department gave thirty-three days notice through the list-servs and twenty-one days notice from the date the rule was published in the registry. These dates are within the timeframe required in law. The Department also created a dedicated website and email box in order to optimize communication regarding the fee increases.

In 2007 Washington voters approved Initiative 960 (I-960) and it became effective December 6, 2007. I-960 requires two-thirds legislative approval for fee increases. The 2008 legislature approved the fee increases and the Department began rulemaking activity for the fee rules.

Profession specific comments

Comments: The Department received many comments regarding licensure, registration, and certification standards for specific professions. Suggestions included increasing exam, education and training standards, increasing reciprocity rates with other states, title protection, and removing registration for some professions all together.

Specific examples include:

- *The Department has lowered the standards for Radiologic Technologists. Increasing the standards to require passing the American Registry of Radiologic Technologists exam could decrease disciplinary activity. There is no benefit to having certification for Radiologic Technologists in this state when national certification is already required. The Department should also tighten the regulations on X-Ray Technicians to include training and education.*
- *The Department is currently considering rule changes that will stop the certification of peer counselors in the chemical dependency treatment field.*
- *The Department should increase reciprocity rates and change the exam from NAADAC to ICRC for certified Chemical Dependency Professionals.*
- *The Department should enact better title protections for Marriage & Family Therapists and Social Workers.*
- *The Department should eliminate the registration requirements for Nurse Technicians.*

Response: The Department is not able to address these suggestions through this rule process. All of the suggestions received require a separate rulemaking process or legislative action.