# Significant Legislative Rule Analysis

WAC 246-12 Part 15 (New)
WAC 246-12-800 through WAC 246-12-830
A Rule Concerning Minimum Standards for Health Equity Continuing Education for Health Professionals

JULY 5, 2022

# SECTON 1:

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

Engrossed Substitute Senate Bill 5229 (ESSB 5229) (Chapter 276, Laws 2021), codified as RCW 43.70.613, creates a new requirement for credentialed health care providers with a continuing education (CE) requirement to take training in health equity topics. The Department of Health (department) defined health equity as all people having the same opportunities and equal access in order to attain their full health potential regardless of the color of their skin, ancestry, ethnicity, level of education, gender identity, sexual orientation, age, religion, socioeconomic status, the job they have, the neighborhood they live in, or their ability status. This legislation impacts both health care providers with a CE requirement and individuals who receive care in the state.

As a result, the department proposes adding new rules to chapter 246-12 WAC, which outlines the administrative procedures and requirements for credentialed health care providers. The proposed rules establish model rules creating minimum standards for health equity CE programs for health care providers credentialed under RCW 18.130.040 to implement ESSB 5229.

A significant number of professional organizations testified in support of the proposed health equity CE requirement during the 2021 legislative session. However, representatives of some health care professions are not in favor of additional CE requirements. The proposed language is the work of collaboration from both proponents and opponents of this legislation. Proposed rules align with ESSB 5229 and were written in consultation with communities with lived experience, advisory committees, health profession boards, health profession commissions, health care professionals, state agencies, and members of the public.

**Health Inequities and Poor Health Outcomes**

Healthy Washingtonians contribute to the economic and social welfare of their families and communities, and access to health services and improved health outcomes allows all Washington families to enjoy productive and satisfying lives. The coronavirus disease 2019 (COVID-19) pandemic has further exposed that health outcomes are experienced differently by different people based on discrimination and bias by the health care system[1].

Research shows that health care resources are distributed unevenly by intersectional categories including, but not limited to, race, gender, ability status, religion, sexual orientation, socioeconomic status, and geography.[2] These inequities have permeated health care delivery, deepening adverse outcomes for historically marginalized communities. ESSB 5529 aims to provide health care providers with the skills to recognize and reduce these inequities in their daily work. In addition to their individual impact, health care workers need the skills to address systemic racism and bias.

[1] Kim, E. J., Marrast, L., & Conigliaro, J. (2020). COVID-19: magnifying the effect of health disparities. Journal of general internal medicine, 35(8), 2441-2442. https://link.springer.com/article/10.1007/s11606-020-05881-4

[2] National Academies of Sciences, Engineering, and Medicine. (2017). Communities in action: Pathways to health equity. https://www.ncbi.nlm.nih.gov/books/NBK425845/

# SECTION 2:

### Is a Significant Analysis required for this rule?

Yes. Under RCW 34.05.328(5)(c)(iii), the proposed rules require a significant analysis because they establish, alter, or revoke qualifications or standards for the issuance, suspension, or revocation of a license, and make significant amendments to a regulatory program. Sections of the proposed rule that do not require a significant analysis are listed with their relevant exemption in SA Table 1.

SA Table 1. Summary of WAC sections that do not require a significant analysis

| WAC Citation | Proposed Changes | Exception Citation |
|---|---|---|
| WAC 246-12-800<br>(NEW) | New rule:<br>Defines the purpose for the following sections. | This section is not considered a significant legislative rule under RCW 34.05.328(5)(b)(iii) "Rules adopting or incorporating by reference without material change . . . Washington state statutes . . . if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule." |
| WAC 246-12-810<br>(NEW) | New rule:<br>Defines the definitions used in proposed sections for Part 15. | This section is not considered a significant legislative rule under RCW 34.05.328 (5)(b)(iv) "Rules that only… clarify language of a rule without changing its effect." |

# SECTION 3:

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

RCW 43.70.613(3)(b) requires the department to adopt model rules establishing the minimum standards and content of health equity CE training. The goal of establishing minimum standards for health equity CE training is to ensure that health care professionals complete health equity training and that the content of the health equity trainings include instruction on skills to address

structural factors, such as bias, racism, and poverty, which manifest as health inequities.[3] The objective of requiring health equity training is to enable health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity.[4]

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# 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.**

RCW 43.70.613(3)(b) directs the department to create model rules establishing minimum standards for health equity CE trainings by January 1, 2023. RCW 43.70.613(3)(c) specifies areas of instruction that must be included in the minimum standards to address structural factors, such as, but not limited to, bias, racism, and poverty, which manifest as health inequities.

The proposed rule is needed to achieve the goals of RCW 43.70.613(3)(b)-(c) because it establishes the minimum standards for health equity CE trainings. Further, the proposed rule satisfies the goals of RCW 43.70.613(b) as it was developed in collaboration with the public and health profession boards and commissions. RCW 43.70.613(3)(b) requires the department to consult with patients or communities with lived experience of health inequities or racism in the health care system, relevant professional organizations, and the rule-making authorities in the development of these rules. The department conducted four listening sessions that encouraged the public to share experiences of inequities or racism in the health care system, four rule workshops where the rule language was developed with the public, and solicited health profession board and commission input on the language of the proposed rule.

The proposed rule is needed to achieve the objectives of RCW 43.70.613(3)(b)-(c) because it establishes the minimum standards for health equity CE training as required. The proposed rule also specifies the training content that will provide health care professionals with the training to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity.

The department has assessed and determined that there are no feasible alternatives to rulemaking because RCW 43.70.613(3)(b)-(c) requires the department to adopt model rules establishing minimum standards for health equity CE programs by January 1, 2023. If these proposed rules are not adopted, the department will fail to satisfy the statutory mandate to establish minimum standards for health equity CE by January 1, 2023.

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[3] RCW 43.70.613(3)(c) (2021).
[4] RCW 43.70.613(3)(c) (2021).

# 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.**

**WAC 246-12-820 Health Equity Continuing Education**

**Description:** Creates model rules establishing minimum standards for health care professionals credentialed under RCW 18.130.040 with a CE requirement, to require two hours of health equity CE every four years.

**Cost:** Legislation requires the department to make a free online training available by July 1, 2023, to satisfy the proposed rule health equity CE requirement. Therefore, the department does not anticipate additional costs for health professionals to comply with the health equity CE requirement.

The department acknowledges that this requirement could create a further barrier to remaining in health care professions especially considering the COVID-19 impacts and additional legislative mandates impacting their profession. The department acknowledges that both the time to complete new health equity CE courses and the cost of attending health equity CE courses could potentially reduce the number of health care professionals, especially those experiencing financial and employment hardships.

**Benefit:** Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity.[5] For some professions, the two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

**WAC 246-12-830 Training content**

**Description:** The proposed rule establishes minimum requirements for education programs providing health equity CE training. It sets minimum topics required to fulfill the two-hour minimum of health equity CE, while also identifying who can provide the training and how completion of training is documented.

[5] RCW 43.70.613(3)(c) (2021).

**Cost:** While health professionals can take any training, the department does not anticipate additional costs associated with the specific health equity topics required by the proposed rule. The department is not directed to create or maintain health equity CE programs – only to identify a free training program that meets the minimum standards.

**Benefit:** Implicit bias training gives professionals the foundation they need to create positive change toward equitable health care for all. Having more healthcare providers educated in these topics could decrease the incidence of these negative experiences and could ultimately lead to more Washingtonians receiving necessary healthcare services. Specifically, the required implicit bias training may provide tools to health professionals to avoid personal and structural bias.

**Conclusion**
The department determined the probable benefits of the proposed rule outweigh the probable costs.

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# 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.**

**WAC 246-12-720 Health Equity Continuing Education**

Not determining the number of CE hours:

The department considered not requiring a set number of CE hours. The minimum standards will be a set standard for all professions unless specified in the profession's rules to exceed or meet standards. It would be difficult to regulate mandatory health equity CE without setting standards that are measurable, such as an hour requirement. A professional could potentially take a 5-minute training to meet health equity CE requirements if the department did not define a minimum duration of training, and therefore miss receiving information that can help reduce personal and structural bias.

Requiring more than two hours of CE:

There were requests from workshop participants to require more than 2 hours in health equity CE every four years. Participants stated that more than 2 hours of health equity CE training was needed for health professionals to learn and understand how to apply these skills. However, due to varied credential renewal cycles, profession specific CE requirements, and differences in average pay across professions, the department was concerned that having a higher number of minimum CEs could place an unfair burden on some professions. Instead, individual professions can exceed the 2 hours of health equity CE minimum standard if this is appropriate for the

profession. Professionals can also take additional trainings beyond the minimum hours on an optional basis.

## WAC 246-12-830 Training content

Aligning topics with University of Washington (UW) program:

During the second workshop, participants considered aligning topics with UW's healthcare equity education.[6] Individuals would be required to take a minimum of one training in proposed topics, which include the following:

- Social Identities, privileges, and intersectionality
- History of race, racism in medicine and science
- Social determinants of health and health disparities
- Gender and sexual diversity, or
- Interrupting implicit bias and micro-aggressions

Trainings that met all UW healthcare equity minimum required topics were difficult to find and limited existing CE programs because they did not include all UW healthcare equity required topics. Workshop participants also stated that out of all training topics, interrupting implicit bias and micro-aggressions were the most important. Others stated that topics did not include other marginalized groups, such as hard of hearing and unseen disabilities. To address the public's concern that implicit bias training needed to be included, the department included implicit bias training as a required topic for all health professionals.

No required topics in rule:

Workshop participants stated the department can rely on the language of RCW 43.70.613(3)(c) for training topics. However, without the department defining in rule what topics a health care professional must complete, it is possible to take any training topic, including those that may not satisfy any topics listed in the legislation. RCW 43.70.613(3)(c) states that health care professionals may take topics not limited to what was provided on the list. The department will provide a training that meets the requirements of the bill, is reflective of our listening sessions, and offers the health care professional flexibility to take a training mentioned in the statute that the professional finds useful.

Requirements for who can provide the training:

The department considered modeling the requirements for health equity CE training providers after the requirements for suicide prevention training providers.[7] Health equity CE providers would be required to prove status as a health care provider and have post-secondary education reflective of health equity. However, these requirements have the potential to alienate those with

[6] Healthcare Equity, University of Washington School of Medicine; available at: Home - Healthcare Equity (washington.edu).
[7] WAC 246-12-640(2) (2016).

lived experience of health inequities, as well as those who work as training providers but are not a health care professional. By limiting who can provide CE training in health equity, it could also limit the options available for receiving health equity education, although material may be based on empirical data. As a result of collaboration with interested parties, education and professional status was removed. This in turn allows for equitable minimum standards, while creating an avenue for each health profession to further define training providers in their profession's rules.

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

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## 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 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.

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## 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 rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

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## 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 rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.