



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: September 20, 2024

TIME: 12:17 PM

WSR 24-20-025

Agency: Department of Health - Dental Quality Assurance Commission

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 23-22-030 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Adding facility types to the list of opioid prescribing exclusions for dentists. The Dental Quality Assurance Commission (commission) is proposing amendments to WAC 246-817-905 to expand the types of patients who are exempt from opioid prescribing rules. The proposed language aligns with the Washington Medical Commission's (WMC) recently adopted rules to ensure consistency and alignment with best practices.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 06, 2024	10:00 AM	<p>In-Person Location: Washington State Dept. of Labor and Industries Room S130 7273 Linderson Way SW Tumwater, WA 98501-5414</p> <p>Webinar Registration: Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone:</p> <p>Zoom link: https://us02web.zoom.us/webinar/register/WN_e3tap85EQv6IZbufqDEdpA</p> <p>After registering you will receive a confirmation email containing information about joining the webinar.</p>	The public hearing will be hybrid. Participants can attend at either the physical location or virtually by registering via Zoom.

Date of intended adoption: December 06, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name Debbie Gardner, Program Manager

Assistance for persons with disabilities:

Contact Debbie Gardner, Program Manager

Address	PO Box 47852, Olympia, WA, 98504-7852	Phone	360-236-4893
Email	https://fortress.wa.gov/doh/policyreview/	Fax	360-236-2901
Fax	360-236-2901	TTY	771
Other		Email	dental@doh.wa.gov
Beginning (date and time)	The date and time of this filing	Other	
By (date and time)	December 02, 2024 at 11:59pm	By (date)	November 27, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: On March 1, 2022, the commission received a rulemaking petition requesting adding Residential Habilitation Centers (RHC) to the list of exclusions for the opioid prescribing rules. The WMC received a similar petition and recently adopted opioid prescribing exclusion rules. The commission works to remain consistent with WMC rules, as dentists and physicians occasionally provide care in the same settings. Furthermore, striving for consistency with WMC makes rules easier for licensees to understand and comply with in the complex health care regulatory environment.

As part of the WMCs rulemaking for Engrossed Substitute House Bill (ESHB) 1427 (chapter 297, Laws of 2017), codified as RCW 18.71.800, they received comments that adhering to the opioid prescribing rules for patients admitted to long term acute care (LTAC) and nursing homes, is onerous. Specifically, the rules require a history and physical as well as a check of the Prescription Monitoring Program be completed prior to prescribing opioids. It has been stated that patients transferred to LTACs and nursing homes had a history and physical while in the previous facility and that practitioners in LTACs and nursing homes can rely on that assessment.

Inpatient hospital patients are currently exempt from the opioid prescribing rules. The WMC and commission recognize that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment. The WMC also received a comment regarding patients in RHCs that they are also similarly situated to LTAC and nursing home patients. They received a similar comment about Residential Treatment Facilities (RTF), that stated RTFs are similar to RHCs except the stay at an RTF is usually short-term. As such, the commission is also exempting patients in RHCs and RTFs.

Exempting patients in LTACs, nursing homes, RHCs, and RTFs from the opioid rules simply allows the practitioners in these facilities to continue the patient's pain medications without having to wait for a physician to perform a history and physical. It is standard for a nursing home or LTAC to have a physician conduct a history and physical within 30 days of admission. Exempting patients in nursing homes and LTACs from the opioid rules does not exempt a dentist at these facilities from complying with the applicable standard of care. The dentist would be expected to conduct a history and dental assessment to assess the patient's functioning within a short time after admission. The LTAC is mainly for patients who were in intensive care in the hospital. These are sick patients in need of intensive care for an extended period of time

Reasons supporting proposal: RCW 18.32.800 charges the commission with adopting rules establishing requirements for prescribing opioid drugs. The proposed rule amendments meet the intent of the underlying statutes by establishing additional exemptions for prescribing opioid drugs in WAC 246-817-905. The exemptions for patients in certain healthcare settings allow for the dentists treating them to seamlessly continue these patients' opioid regime. Rulemaking is appropriate to promote a clear, consistent framework for practitioners who prescribe opioid drugs. The proposed rules maintain patient safety, while encouraging cross-profession cohesion, and are responsive to the need to increase statewide efforts to ensure proper prescribing and use of opioids.

Statutory authority for adoption: RCW 18.32.0365, 18.32.800, and 18.130.050

Statute being implemented:

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Dental Quality Assurance Commission

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Debbie Gardner	111 Israel Rd. SE, Tumwater, WA 98501	360-236-4893
Implementation: Debbie Gardner	111 Israel Rd. SE, Tumwater, WA 98501	360-236-4893
Enforcement: Debbie Gardner	111 Israel Rd. SE, Tumwater, WA 98501	360-236-4893

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:
Name
Address
Phone
Fax
TTY
Email
Other

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name: Debbie Gardner, Program Manager
Address: PO Box 47852, Olympia, WA, 98504-7852
Phone: 360-236-4893
Fax: 360-236-2901
TTY: 771
Email: dental@doh.wa.gov
Other

 No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.
Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: The proposed rule does not affect small businesses

(2) Scope of exemptions: *Check one.*

- The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name
Address
Phone
Fax
TTY
Email
Other

Date: September 13, 2024

Name: Bryan Swanson, DDS

Title: Dental Commission Chair

Signature:



AMENDATORY SECTION (Amending WSR 19-02-043, filed 12/26/18, effective 1/26/19)

WAC 246-817-905 Exclusions. WAC 246-817-901 through 246-817-980 do not apply to:

(1) The treatment of patients with cancer-related pain. Cancer-related pain means pain that is unpleasant, persistent, subjective sensory and emotional experience associated with actual or potential tissue injury or damage or described in such terms and is related to cancer or cancer treatment that interferes with usual functioning;

(2) The provision of palliative, hospice, or other end-of-life care;

~~(3) ((The treatment of inpatient hospital patients. Inpatient means a person who has been admitted to the hospital for more than twenty-four hours; or~~

~~(4))~~ The provision of procedural medications;

(4) The treatment of patients who have been admitted to any of the following facilities for more than 24 hours:

(a) Acute care hospitals licensed under chapter 70.41 RCW;

(b) Psychiatric hospitals licensed under chapter 71.12 RCW;

(c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;

(d) Long-term acute care hospitals as defined in RCW 74.60.010;

or

(e) Residential treatment facilities as defined in RCW 71.12.455.

(5) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection (4) of this section.