

## WSR 23-12-093

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed June 6, 2023, 8:28 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 246-978 WAC, Death With Dignity Act requirements. The department of health (department) proposes amending existing rules and repealing obsolete rules within chapter 246-978 WAC. The proposed changes realign the rule chapter to align with ESSB 5179 (chapter 38, Laws of 2023) which amended chapter 70.245 RCW, The Washington Death with Dignity Act.

Hearing Location(s): On July 13, 2023, at 10:00 a.m. A virtual public hearing, without a physical meeting space, will be held. Register in advance for this webinar <https://us02web.zoom.us/join/91012920000>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: July 20, 2023.

Submit Written Comments to: Kelly Thomson, Department of Health, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504-7814, email <https://fortress.wa.gov/doh/policyreview>, by July 13, 2023.

Assistance for Persons with Disabilities: Contact Kelly Thomson, phone 564-669-1736, email [kelly.thomson@doh.wa.gov](mailto:kelly.thomson@doh.wa.gov), by July 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes revisions to the Death With Dignity Act requirements in chapter 246-978 WAC that reflect (1) the amendments made during the 2023 legislative session and (2) the writing style described in the 2023 Bill Drafting Guide.

ESSB 5179 did the following:

- In RCW 70.245.010, made changes to multiple definitions.
  - "Attending physician" became "attending qualified medical provider."
  - "Consulting physician" became "consulting qualified medical provider."
  - Added independent clinical social worker, advanced social worker, mental health counselor, psychiatric advanced registered nurse practitioner to the "counseling" definition.
  - Removed the definition of "physician."
  - Added a definition of "qualified medical provider" that includes physician, physician assistant, and advanced registered nurse practitioner.
- Changed the terms used throughout chapter 70.245 RCW to match the terms defined in RCW 70.245.010.
- In RCW 70.245.030, removed the long-term care facility witness requirement in subsection (4).
- In RCW 70.245.150, expanded how participating providers may send forms to the department. Now the department can accept forms electronically and by fax.

WAC 246-978-010 duplicates the definitions in statute, which means that the department must update definitions every time the legislature changes the definitions. The department proposes replacing the duplicate definitions with a cross-reference to statute and removing definitions no longer in use. Using a cross-reference will reduce

future definition conflicts, help people find the related statute, and reduce administrative work to keep the rule aligned with statute.

WAC 246-978-020 describes how participating providers must report to the department as required by RCW 70.245.150(2). The department proposes three changes:

- Replacing "physician" with "qualified medical provider."
- Replacing the mailing address with "electronically, by mail, or fax."
- Removing the publication number after the form name.

These proposed changes keep the rule aligned with statute. Removing the publication numbers allows the department to improve reporting forms without changing the meaning of the rule.

WAC 246-978-030 duplicates language in RCW 70.245.150(2). The department proposes repealing WAC 246-978-030 to remove the duplication and prevent potential conflicts between statute and rule.

WAC 246-978-040 describes who can be a witness for a patient living in a long-term care facility. ESSB 5179 repealed the witness requirement for a long-term care facility described in RCW 70.245.030(4). The department proposes repealing WAC 246-978-040 because statute no longer requires it. The proposed change keeps the chapter aligned with statute and removes unneeded regulation.

The department also proposes style changes throughout chapter 246-978 WAC that do not change the meaning of the rule. Proposed changes align rule language with the 2023 Bill Drafting Guide.

- Writing numbers greater than ten as a numeral instead of a word, for example switching "thirty" to "30."
- Removing capitalization.
- Changing passive voice to active voice.
- Adding commonly used phrases.
- Improving plain talk.

Reasons Supporting Proposal: The department's proposal makes sure that the chapter uses the same terms as statute, removes regulation we no longer need, and improves plain talk.

Statutory Authority for Adoption: ESSB 5179 (chapter 38, Laws of 2023); chapter 70.245 RCW.

Statute Being Implemented: ESSB 5179 (chapter 38, Laws of 2023); chapter 70.245 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Kelly Thomson, 101 Israel Road, Tumwater, WA 98501, 564-669-1736; Implementation: Kaititza Holthaus, 101 Israel Road, Tumwater, WA 98501, 360-236-4311; and Enforcement: Katie Hutchinson, 101 Israel Road, Tumwater, WA 98501, 360-236-4307.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making falls under the exception in RCW 34.05.328 (5)(b)(v). ESSB 5179 (2023) amended definitions and removed language throughout chapter 70.245 RCW. Proposed changes update the chapter to reflect content explicitly or specifically dictated by statute as amended during the 2023 legislative session. The proposed rule also provides clarity without changing the effects of the rule or statute and therefore is also exempt under RCW 34.05.328 (5)(b)(iv).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: ESSB 5179 (2023) amended definitions and removed language throughout chapter 70.245 RCW. Proposed changes update the chapter to reflect content explicitly or specifically dictated by statute as amended during the 2023 legislative session. The proposed rule also provides clarity without changing the effects of the rule or statute and therefore is also exempt under RCW 34.05.310 (4) (d).

Scope of exemption for rule proposal:

Is fully exempt.

June 6, 2023  
 Todd Mountin, PMP  
 Deputy Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

#### OTS-4607.1

AMENDATORY SECTION (Amending WSR 09-06-010, filed 2/20/09, effective 3/5/09)

**WAC 246-978-001 Purpose and authority.** (~~This chapter is adopted by~~) The Washington state department of health adopts this chapter to implement the provisions of chapter 70.245 RCW, the Washington Death with Dignity Act.

[Statutory Authority: Chapter 70.245 RCW. WSR 09-06-010, § 246-978-001, filed 2/20/09, effective 3/5/09.]

AMENDATORY SECTION (Amending WSR 09-06-010, filed 2/20/09, effective 3/5/09)

**WAC 246-978-010 Definitions.** (~~For the purpose of this chapter, the following definitions apply:~~) In addition to the definitions contained in RCW 70.245.010, the following definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Act" means the "Washington Death with Dignity Act" or Initiative Measure No. 1000 as adopted by the voters on November 4, 2008, codified as chapter 70.245 RCW, and as amended.

(2) (~~"Adult" means an individual who is eighteen years of age or older.~~

(3) ~~"Attending physician" means the physician, as defined in chapter 18.71 or 18.57 RCW, who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.~~

~~(4) "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating, if those persons are available.~~

~~(5) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.~~

~~(6) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.~~

~~(7)) "Department" means the department of health.~~

~~((8) "Dispensing record" means a copy of the Pharmacy Dispensing Record form, DOH 422-067.~~

~~(9) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the law to administer health care or dispense medication in the ordinary course of business or practice of a profession and includes a health care facility.~~

~~(10) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:~~

~~(a) His or her medical diagnosis;~~

~~(b) His or her prognosis;~~

~~(c) The potential risks associated with taking the medication to be prescribed;~~

~~(d) The probable result of taking the medication to be prescribed; and~~

~~(e) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.~~

~~(11) "Long-term care facility" means a facility licensed under chapter 18.51 or 72.36 RCW.~~

~~(12) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.~~

~~(13) "Patient" means a person who is under the care of a physician.~~

~~(14) "Physician" means a doctor of medicine, as defined in chapter 18.71 RCW, or osteopathy, as defined in chapter 18.57 RCW, licensed to practice medicine in the state of Washington.~~

~~(15) "Qualified patient" means a competent adult who is a resident of Washington state and has satisfied the requirements of the act in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.~~

~~(16) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.~~

~~(17) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.)~~

[Statutory Authority: Chapter 70.245 RCW. WSR 09-06-010, § 246-978-010, filed 2/20/09, effective 3/5/09.]

AMENDATORY SECTION (Amending WSR 09-06-010, filed 2/20/09, effective 3/5/09)

**WAC 246-978-020 Reporting.** (1) To comply with the act, within ~~((thirty))~~ 30 calendar days of writing a prescription for medication to end the life of a qualified patient, the attending ~~((physician))~~ qualified medical provider shall send the following completed ~~((, signed, and dated documentation by mail to the State Registrar, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504))~~ documents to the department electronically, by mail, or fax:

(a) The patient's ~~((completed))~~ written request for medication to end life, either using the Written Request for Medication to End My Life in a Humane and Dignified Manner form ~~((, DOH 422-063,))~~ or in substantially the same form as described in the act;

(b) Attending ~~((Physician's))~~ qualified medical provider's compliance form ~~((, DOH 422-064));~~

(c) Consulting ~~((Physician's))~~ qualified medical provider's compliance form ~~((, DOH 422-065));~~ and

(d) Psychiatric/psychological consultant's compliance form, ~~((DOH 422-066,))~~ if an evaluation was performed.

(2) Within ~~((thirty))~~ 30 calendar days of a qualified patient's ingestion of a lethal dose of medication obtained under the act, or death from any other cause, whichever comes first, the attending ~~((physician shall complete the Attending Physician's After Death Reporting form, DOH 422-068))~~ qualified medical provider shall send the completed attending qualified medical provider's after death reporting form to the department electronically, by mail, or fax.

(3) To comply with the act, within ~~((thirty))~~ 30 calendar days of dispensing medication, the dispensing health care provider shall ~~((file))~~ send a copy of the ~~((Pharmacy Dispensing Record form, DOH 422-067, with the State Registrar, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504. Information to be reported to the department shall include))~~ pharmacy dispensing record form to the department electronically, by mail, or fax. The pharmacy dispensing record form must contain:

(a) Patient's name and date of birth;

(b) Patient's address;

(c) Prescribing ~~((physician's))~~ qualified medical provider's name and phone number;

(d) Dispensing health care provider's name, address and phone number;

(e) Medication dispensed and quantity;

(f) Date the prescription was written; and

(g) Date the medication was dispensed.

[Statutory Authority: Chapter 70.245 RCW. WSR 09-06-010, § 246-978-020, filed 2/20/09, effective 3/5/09.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-978-030 Confidentiality—Liability.
- WAC 246-978-040 Qualifications of witness in a long-term care facility.