

WSR 21-17-062

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed August 11, 2021, 11:10 a.m., effective September 11, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-945-014 Electronic prescribing mandate waiver. The pharmacy quality assurance commission (commission) and the department of health (department) have jointly adopted a new section of rule to outline the electronic prescribing mandate, exceptions allowing a waiver, and related waiver process as required by SSB 5380 passed during the 2019 legislative session.

Citation of Rules Affected by this Order: New WAC 246-945-014.

Statutory Authority for Adoption: RCW 69.50.312; SSB 5380 (chapter 314, Laws of 2019).

Adopted under notice filed as WSR 21-08-059 on April 5, 2021.

Changes Other than Editing from Proposed to Adopted Version: The department and commission made three nonsubstantive edits to the proposed rule as a result of the public hearing. First, in subsection (3)(a)(iii) "December 31, 2021" was changed to "December 31, 2022." The rules were originally drafted prior to the onset of the COVID-19 pandemic and the resulting waiver issued by the secretary of health to help relieve pressure on the health care system during the pandemic response. Staff updated this language to align with the expiration of the secretary's waiver. Without making this change, the economic hardship criteria under subsection (3)(a)(iii) would expire before the department expects compliance.

The second change from the proposed to adopted version is in subsection (3)(c). After "circumstances" staff added the word "include." This is a clarifying edit that structurally aligns that clause with the other clauses in this section and makes clear the department and commission's intent that subsection (3)(c) is an exhaustive list.

Finally, the third change is in subsection (4). In response to comments from interested parties, the department and commission added the word "knowingly" prior to "submitting a false attestation is grounds ..." This addition clarifies that the department and licensing boards and commissions will only pursue disciplinary action against a provider for noncompliance with RCW 69.50.312 and WAC 246-945-014 if the practitioner knowingly submits a false attestation.

A final cost-benefit analysis is available by contacting Lindsay Trant, P.O. Box 47890, Olympia, WA 98504-7890, phone 360-236-2932, TTY 711, email pharmacyrules@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: June 4, 2021.

Kristin Peterson, JD

Deputy Secretary, Policy and Planning
for Umair A. Shah, MD, MPH/Teri Ferreira, RPH
Secretary/Pharmacy Quality Assurance Commission Chair

OTS-2896.2

NEW SECTION

WAC 246-945-014 Electronic prescribing mandate waiver. (1) A practitioner may submit an attestation to the department for a waiver from the electronic prescribing mandate in RCW 69.50.312, if the practitioner is experiencing an economic hardship, technological limitations not reasonably in the control of the practitioner, or other exceptional circumstance. A practitioner does not need to submit a waiver if exempted from the mandate under RCW 69.50.312 (2) (a) through (j). A practitioner must submit an attestation for the waiver using forms provided by the department. The department shall deem the waiver granted upon submission of an attestation and the practitioner will be deemed exempt under RCW 69.50.312 (2) (k).

(2) A practitioner who has submitted an attestation for a waiver from the mandate in RCW 69.50.312 is exempt from the electronic prescribing mandate for the calendar year in which the attestation is signed, beginning with the effective date of this section.

(a) For economic hardship and technical limitations, a practitioner may attest to the need for a waiver up to three times, giving the practitioner three years to come into compliance with the mandate.

(b) There is no limit on the number of other exceptional circumstance waivers under subsection (3) (c) of this section that a practitioner can submit.

(3) A practitioner required to electronically prescribe under RCW 69.50.312 may submit an attestation for a waiver from this mandate due to:

(a) Economic hardship in the following circumstances:

(i) A bankruptcy in the previous year or submitted an attestation for a waiver under this chapter due to a bankruptcy in the previous year;

(ii) Opening a new practice after January 1, 2020;

(iii) Intent to discontinue operating in Washington prior to December 31, 2022; or

(iv) Operating a low-income clinic, that is defined as a clinic serving a minimum of thirty percent medicaid patients.

(b) Technological limitations outside the control of the practitioner if the practitioner is in the process of transitioning to an electronic prescription system.

(c) Other exceptional circumstances include:

(i) The practitioner is providing services at a free clinic;

(ii) The practitioner generates fewer than one hundred prescriptions of Schedules II through V drugs in a one-year period, including both new and refill prescriptions;

(iii) The practitioner is located in an area without sufficient internet access to comply with the e-prescribing mandate; or

(iv) Unforeseen circumstances that stress the practitioner or health care system in such a way that compliance is not possible. Ex-

amples may include, but are not limited to, natural disasters, wide-spread health care emergencies, unforeseeable barriers to electronic prescribing, or unforeseen events that result in a statewide emergency.

(4) The department may audit waiver attestations submitted by a practitioner to determine compliance with this chapter. Knowingly submitting a false attestation is grounds for disciplinary action against a practitioner's license by the appropriate disciplinary authority as well as fines pursuant to RCW 69.50.312(5).

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