

WSR 24-20-025

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed September 20, 2024, 12:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-030.

Title of Rule and Other Identifying Information: 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): On December 6, 2024, at 10:00 a.m., at the Washington State Department of Labor and Industries, Room S130, 7273 Linderson Way S.W., Tumwater, WA 98501-5414; or 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: Zoom link [https://us02web.zoom.us/webinar/register/WN\\_e3tap85EQv6lZbufqDEdpA](https://us02web.zoom.us/webinar/register/WN_e3tap85EQv6lZbufqDEdpA). After registering you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 6, 2024.

Submit Written Comments to: Debbie Gardner, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, beginning the date and time of this filing, by December 2, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Debbie Gardner, program manager, phone 360-236-4893, fax 360-236-2901, TTY 771 [711], email [dental@doh.wa.gov](mailto:dental@doh.wa.gov), by 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 rule-making petition requesting adding residential habilitation centers (RHC) to the list of exclusions for the opioid prescribing rules. 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 WMC's rule making for 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. WMC and commission recognize that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment. WMC also received a comment regarding patients in RHCs that they are also similarly situated to LTAC and nurs-

ing 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 health care settings allow for the dentists treating them to seamlessly continue these patients' opioid regime. Rule making 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.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Gardner, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Gardner, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 771 [711], email dental@doh.wa.gov.

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(4).

Explanation of exemptions: The proposed rule does not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 13, 2024  
Bryan Swanson, DDS  
Dental Commission Chair

## OTS-5615.1

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.