

## WSR 23-17-071

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed August 14, 2023, 3:36 p.m., effective September 14, 2023]

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

Purpose: The department of health (department) adopts 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 adopts replacement of duplicate definitions with a cross-reference to statute and removal of definitions no longer in use.

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

WAC 246-978-030 duplicates language in RCW 70.245.150(2). The department repeals 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 ESSB 5179 repealed the witness requirement for a long-term care facility described in RCW 70.245.030(4).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 repeals WAC 246-978-040 because statute no longer requires it.

The department also adopts style changes throughout chapter 246-978 WAC that do not change the meaning of the rule.

Citation of Rules Affected by this Order: Repealing WAC 246-978-030 and 246-978-040; and amending WAC 246-978-010 and 246-978-020.

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

Adopted under notice filed as WSR 23-12-093 on June 6, 2023.

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 0, Amended 2, Repealed 2.

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 2, Repealed 2.

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 0, Amended 2, Repealed 2.

Date Adopted: August 14, 2023.

Kristin Peterson, JD  
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.

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.)~~

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.

#### 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.