

## WSR 21-19-018

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed September 7, 2021, 11:37 a.m., effective October 8, 2021]

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

Purpose: WAC 246-470-037 Prescription monitoring program—Electronic health record (PMP-EHR) mandate waiver. The department of health (department) has adopted a new section of rule to outline the PMP-EHR mandate waiver process and criteria as required by SSB 5380 passed during the 2019 legislative session.

Citation of Rules Affected by this Order: New WAC 246-470-037.

Statutory Authority for Adoption: RCW 70.225.025; and SSB 5380 (chapter 314, Laws of 2019) codified as RCW 70.225.090 (2)(b).

Adopted under notice filed as WSR 21-08-048 on April 2, 2021.

Changes Other than Editing from Proposed to Adopted Version: In subsection (3)(a)(iv) "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)(iv) would expire before the department expects compliance.

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 exclusive list.

A final cost-benefit analysis is available by contacting Carly Bartz-Overman, P.O. Box 47852, Olympia, WA 98504, phone 360-236-3044, TTY 711, email carly.bartz-overman@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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.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: September 6, 2021.

Kristin Peterson, JD  
Deputy Secretary  
Policy and Planning  
for Umair A. Shah, MD, MPH  
Secretary

OTS-2913.2

NEW SECTION

**WAC 246-470-037 Waiver for integrating electronic health record system with the prescription monitoring program.** (1) A facility, entity, office, or provider group that is subject to the prescription monitoring program integration mandate requirement in RCW 70.225.090 (2)(a), and is experiencing an economic hardship, technological limitation, or other exceptional circumstances as stated in RCW 70.225.090 (2)(b), may submit an attestation to the department for a waiver from the integration mandate. The attestation must be submitted on forms provided by the department. The waiver is deemed granted upon submission.

(2) A facility, entity, office, or provider group that has been granted a waiver from the mandate in RCW 70.225.090 (2)(a) shall be exempt from the prescription monitoring program integration mandate for the calendar year in which the attestation is received by the department beginning with the effective date of this section.

(a) For economic hardship and technical limitation, a facility, entity, office, or provider group may submit up to three annual attestations, giving the facility, entity, office, or provider group up to three years to integrate its electronic health record with the prescription monitoring program.

(b) There is no limit on the number of other exceptional circumstance waivers under subsection (3)(c) of this section that a facility, entity, office, or provider group may submit.

(3) A facility, entity, office, or provider group may submit an attestation for a waiver from the mandate due to:

(a) Economic hardship in the following circumstances:

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

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

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

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

(b) Technological limitations outside the control of the facility, entity, office, or provider group in the following circumstance: Integration of electronic health records system with the PMP through a method approved by the department is in process but has not yet been completed;

(c) Other exceptional circumstances include:

(i) Providing services as a free clinic;

(ii) The internet speed or bandwidth required to integrate an electronic health record with the prescription monitoring program through a method approved by the department is not available;

(iii) The technology to connect the electronic health record of the entity requesting the waiver to the prescription monitoring program through a method approved by the department does not exist;

(iv) Fewer than one hundred prescriptions for Schedule II-V drugs are generated in a calendar year; or

(v) Unforeseen circumstances that stress the practitioner or health care system in such a way that compliance is not possible. Examples may include, but are not limited to, natural disasters, widespread health care emergencies, unforeseen barriers to integration, or unforeseen events that result in a statewide emergency.

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