

WSR 22-05-083

PROPOSED RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed February 15, 2022, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-070.

Title of Rule and Other Identifying Information: WAC 246-918-801 Exclusions (physician assistants) and 246-919-851 Exclusions (physicians). The Washington medical commission (commission) is proposing amendments to expand the types of patients who are exempt from certain provisions of rule when being prescribed opioid drugs.

Hearing Location(s): On April 13, 2022, at 2:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Washington medical commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register for opioid prescribing patient exemptions rules hearing on April 13, 2022, at 2:30 p.m. PST, at <https://attendee.gotowebinar.com/register/5336471307862283024>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 13, 2022.

Submit Written Comments to: Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview>, by April 6, 2022.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 800-525-0127, TTY 711, email medical.rules@wmc.wa.gov, by April 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing exempting patients in long-term acute care (LTAC) facilities, nursing homes, residential habilitation centers (RHC), and residential treatment facilities (RTF) from the opioid prescribing rules. This change will allow physicians and physician assistants in these facilities to continue the patient's pain medications without having to perform a history and physical or wait for a history and physical to be completed on the patient.

Reasons Supporting Proposal: As part of the commission's rule making for ESHB 1427, enacted in 2017 and codified as RCW 18.71.800, the commission received comments that adhering to the opioid prescribing rules for patients admitted to LTACs and nursing homes, is onerous. Specifically, the rules require a history and physical as well as a check of the prescription monitoring program (PMP) 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. The commission recognizes that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment.

The commission has also received a comment regarding patients in RHCs, that they are also similarly situated to LTAC and nursing home patients. We received a similar comment about RTFs, 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.

Statutory Authority for Adoption: RCW 18.71A.800, 18.71.017, and 18.130.050.

Statute Being Implemented: RCW 18.71A.800.

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

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Melanie de Leon, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2755.

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 Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-236-2727, TTY 711, email amelia.boyd@wmc.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. These rules only apply to providers.

February 15, 2022
Melanie de Leon
Executive Director

OTS-3321.2

Physician Assistants

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-801 Exclusions. WAC 246-918-800 through 246-918-935 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care;
- (3) ~~((The treatment of inpatient hospital patients who are patients who have been admitted to a hospital for more than twenty-four hours; or~~
- ~~(4))~~ The provision of procedural medications; or
- (4) The treatment of patients in the following facilities:
 - (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;

(e) Residential treatment facilities as defined in RCW 71.12.455;

or

(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.

[Statutory Authority: RCW 18.71.017, 18.71.800, 18.71A.800 and 2017 c 297. WSR 18-23-061, filed 11/16/18, effective 1/1/19. Statutory Authority: RCW 18.71.450, 18.71A.100, 18.71.017, and 18.71A.020. WSR 11-12-025, § 246-918-801, filed 5/24/11, effective 1/2/12.]

OTS-3322.1

Physicians

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-919-851 Exclusions. WAC 246-919-850 through 246-919-985 do not apply to:

(1) The treatment of patients with cancer-related pain;

(2) The provision of palliative, hospice, or other end-of-life care;

~~(3) ((The treatment of inpatient hospital patients who are patients who have been admitted to a hospital for more than twenty-four hours; or~~

~~(4-))~~ The provision of procedural medications; or

(4) The treatment of patients in the following facilities:

(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;

(e) Residential treatment facilities as defined in RCW 71.12.455;

or

(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.

[Statutory Authority: RCW 18.71.017, 18.71.800, 18.71A.800 and 2017 c 297. WSR 18-23-061, § 246-919-851, filed 11/16/18, effective 1/1/19. Statutory Authority: RCW 18.71.450, 18.71A.100, 18.71.017, and 18.71A.020. WSR 11-12-025, § 246-919-851, filed 5/24/11, effective 1/2/12.]