

## WSR 23-09-063

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed April 18, 2023, 3:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-142.

Title of Rule and Other Identifying Information: WAC 246-853-661 Exclusions. The board of osteopathic medicine and surgery (board) is proposing amendments 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 June 2, 2023, at 9:30 a.m. The board will provide a virtual and a physical location for this hearing. Physical location: Lacey Community Center, Room 1 and 2, 6729 Pacific Avenue S.E., Olympia, WA 98503; or join on your computer, mobile app, or room device. Microsoft Teams meeting [Date of Intended Adoption: June 2, 2023.](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_NDI1MGQ2NWMtZWUxYy00YTI5LTgwOTAtMWE5OGQzZTg5YmVk%2540thread.v2%2F0%3Fcontext%3D%257b%2522tid%2522%253a%25221d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522oid%2522%253a%25223f147261-e44e-4696-9d68-1ecb58823a4d%2522%257d&data=05%7C01%7Cheather.cantrell%40doh.wa.gov%7C6ba54d3e479b40124fbf08db2b0c48cf%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638151103986924579%7CUnknown%7CTWFpbGZsb3d8eyJWJjoicMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=JuRAfkNapDHflhQtasOPGE8Mnrs%2BZVXJVFwIaBmd%2F48%3D&reserved=0, Meeting ID 261 154 277 114, Passcode p8WiJ9; or call in (audio only) +1 564-999-2000,,245423285# United States, Olympia, 833-322-1218,,245423285# United States (toll-free), Phone Conference ID 245 423 285#.</p></div><div data-bbox=)

Submit Written Comments to: Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2850, by May 26, 2023.

Assistance for Persons with Disabilities: Contact Becky McElhiney, phone 360-236-4766, fax 360-236-2901, TTY 711, email [osteopathic@doh.wa.gov](mailto:osteopathic@doh.wa.gov), by May 26, 2023

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WMC recently adopted opioid prescribing exclusion rules. The board works to remain consistent with WMC rules, as osteopathic physicians and allopathic physicians regularly 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, WMC received comments stating 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 the board 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 residential habilitation centers (RHC) that they are also similarly situated to LTAC and nursing 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 board is also proposing exempting patients in RHCs and RTFs.

Exempting patients in LTACs and nursing homes 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 physician at these facilities from complying with the applicable standard of care. The physician would be expected to conduct a history and physical to assess the patient's functioning within a short time after admission. 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: The proposed rules are necessary to ensure best practice and standards of care and remove unnecessary regulatory barriers when prescribing opioids for patients in LTACs. The rules align osteopathic physician rules to those of allopathic physicians, which avoids confusion for physicians practicing in the same settings.

Statutory Authority for Adoption: RCW 18.57.005, 18.57.800, and 18.130.050.

Statute Being Implemented: RCW 18.57.005, 18.57.800, and 18.130.050.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: DOH, board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting: Bechy [Becky] McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2831.

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 Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@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).

Scope of exemption for rule proposal:

Is fully exempt.

April 17, 2023  
U. James Chaney  
Executive Director

## OTS-4251.1

AMENDATORY SECTION (Amending WSR 18-20-087, filed 10/1/18, effective 11/1/18)

**WAC 246-853-661 Exclusions.** WAC 246-853-660 through 246-853-790 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. As used in this section, "inpatient" means a person who has been admitted to a hospital for more than twenty-four hours; or~~
- ~~(4))~~ The provision of procedural premedications;
- (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;
- 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 18.57.800, 18.57A.800 and 2017 c 297. WSR 18-20-087, § 246-853-661, filed 10/1/18, effective 11/1/18. Statutory Authority: RCW 18.57.285, 18.57A.090, 18.57.005, 18.57A.020. WSR 11-10-062, § 246-853-661, filed 5/2/11, effective 7/1/11.]