



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 21, 2019

TIME: 11:23 AM

WSR 19-21-135

Agency: Department of Health- Dental Quality Assurance Commission

☒ **Original Notice**

☐ **Supplemental Notice to WSR**

☐ **Continuance of WSR**

☒ **Preproposal Statement of Inquiry was filed as WSR 19-15-095 ; or**

☐ **Expedited Rule Making--Proposed notice was filed as WSR ; or**

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

☐ **Proposal is exempt under RCW .**

Title of rule and other identifying information: (describe subject) WAC 246-817-907 Patient notification, secure storage, and disposal. The Dental Quality Assurance Commission (commission) is proposing amending WAC 246-817-907 to establish patient notification, documentation, counseling requirements, and the right to refuse an opioid prescription for those prescribing opioids, as directed by section 4, codified as RCW 18.32.810, and section 17, codified as RCW 69.50.317, of Substitute Senate Bill (SSB) 5380 (chapter 314, Laws of 2019) for licensed dentists. The commission is also proposing exemptions to clarify when patient notification, documentation, and counseling requirements for opioid prescribing is needed.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
12/06/2019	9:35 am	Department of Health Town Center 2 111 Israel Rd. SE Tumwater, WA 98501	

Date of intended adoption: 12/06/2019 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Jennifer Santiago

Address: PO Box 47852

Olympia, WA 98504

Email: <https://fortress.wa.gov/doh/policyreview>

Fax: 360-236-2901

Other:

By (date) 11/27/2019

Assistance for persons with disabilities:

Contact Jennifer Santiago

Phone: 360-236-4893

Fax: 360-236-2901

TTY: (360) 833-6388 or 711

Email: jennifer.santiago@doh.wa.gov

Other:

By (date) 11/27/2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: SSB 5380 requires the commission, along with the Washington Medical Commission, Podiatric Medical Board, Board of Osteopathic Medicine and Surgery, and Nursing Care Quality Assurance Commission to adopt or amend rules establishing additional patient notification and right to refuse requirements.

Sections 4 of SSB 5380, codified as RCW 18.32.810 directs the commission to adopt or amend the opioid prescribing rules by January 1, 2020, to establish the requirement for licensed dentists to notify patients of their right to refuse an opioid prescription or order and to document any refusal.

Section 17 of SSB 5380, codified as RCW 69.50.317 requires the prescribing practitioner, prior to the first opioid prescription, to discuss with the patient risks of opioids, pain management alternatives to opioids, and provide the patient a written copy of the warning language. The proposed rule includes alternatives in the patient notification.

In addition, the proposed rule clarifies situations where the notification requirements would not apply. Specifically, notification requirements that would not apply to emergent care, situations where pain represents a significant health risk, procedures involving administration of medications, when a patient is unable to grant or revoke consent, or for medication assisted treatment (MAT) for substance use disorders. The exemptions are included because SSB 5380 only applies to prescriptions and these exemptions clarify settings in which direct administration is occurring.

The intent of SSB 5380 is to reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Reasons supporting proposal: The proposed rule is necessary to restate patient notification and patient right to refuse related to opioid prescribing requirements for dentists, and to clarify situations when notification is not required. The proposed rules provide a necessary framework and structure for safe, consistent opioid prescribing practice consistent with the directives of SSB 5380. The goal of this legislation is to further reduce the number of people who inadvertently become addicted to opioids, and consequently, reduce the burden on opioid treatment programs.

Statutory authority for adoption: RCW 18.32.810 and RCW 18.32.0365

Statute being implemented: RCW 18.32.810 and RCW 69.50.317

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Dental Quality Assurance Commission

☐ Private

☐ Public

☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jennifer Santiago	111 Israel Rd. SE, Tumwater, WA 98501	360-236-4893
Implementation:	Jennifer Santiago	111 Israel Rd. SE, Tumwater, WA 98501	360-236-4893
Enforcement:	Jennifer Santiago	111 Israel Rd. SE, Tumwater, WA 98501	360-236-4893

Is a school district fiscal impact statement required under RCW 28A.305.135?

☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Jennifer Santiago

Address: PO Box 47852

Olympia, WA 98504

Phone: 360-236-4893

Fax: 360-236-2901

TTY: (360) 833-6388 or 711

Email: jennifer.snatiago@doh.wa.gov

Other:

☐ No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☒ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b)
(Internal government operations)

☒ RCW 34.05.310 (4)(e)
(Dictated by statute)

☐ RCW 34.05.310 (4)(c)
(Incorporation by reference)

☐ RCW 34.05.310 (4)(f)
(Set or adjust fees)

☒ RCW 34.05.310 (4)(d)
(Correct or clarify language)

☐ RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's analysis showing how costs were calculated.

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: October 20, 2019

Name: Julia Richman, DDS

Title: Chairperson, Dental Quality Assurance Commission

Signature:



WAC 246-817-907 Patient notification, secure storage, and disposal. (1) The dentist shall ~~((provide information to))~~ discuss with the patient educating them of risks associated with the use of opioids, including the risk of dependence and overdose. The dentist shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and

(b) The transition between phase of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

(ii) Subacute pain to chronic pain.

(3) Patient written notification must include information regarding:

(a) Pain management alternative to opioid medications;

~~(b)~~ The safe and secure storage of opioid prescriptions; ((and

~~(b))~~ (c) The proper disposal of unused opioid medication including, but not limited to, the availability of recognized drug take-back programs ((-

~~(4) This))~~; and

(d) The patient's right to refuse an opioid prescription or order for any reason. If the patient indicates a desire to not receive an opioid, the dentist shall document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(4) The requirements in this section do not apply to the administration of an opioid including, but not limited to, the following situations:

(a) Emergent care;

(b) Where patient pain represents a significant health risk;

(c) Procedures involving the administration of anesthesia;

(d) When the patient is unable to grant or revoke consent; or

(e) MAT for substance use disorders.

(5) If the patient is under eighteen years old or is not competent, the discussion required by subsection (1) of this section must include the patient's parent, guardian, or other person identified in RCW 7.70.065, unless otherwise provided by law.

(6) The requirements of this section may be satisfied with a document provided by the department of health.

(7) The requirements of this section may be satisfied by a dentist designating any individual who holds a credential issued by a disciplining authority under RCW 18.130.040 to provide the information.