



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: September 07, 2021

TIME: 11:37 AM

WSR 21-19-018

**Agency:** Department of Health

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**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 Substitute Senate Bill (SSB) 5380 passed during the 2019 legislative session.

**Citation of rules affected by this order:**

New: WAC 246-470-037

Repealed: None

Amended: None

Suspended: None

**Statutory authority for adoption:** RCW 70.225.025 and SSB 5380 (chapter 314, Laws of 2019) codified as RCW 70.225.090(2)(b)

**Other authority:** None

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 21-08-048 on 04/02/2021 (date).

Describe any 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.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted in the agency's own initiative:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>1</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**Date Adopted:** 09/06/2021

**Signature:**

**Name:** Kristin Peterson, JD for Umair A. Shah, MD, MPH

**Title:** Deputy Secretary, Policy and Planning for Secretary of Health



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.