



# PROPOSED RULE MAKING

**CR-102 (July 2022)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: April 18, 2023

TIME: 3:05 PM

WSR 23-09-063

**Agency:** Department of Health – Board of Osteopathic Medicine and Surgery

**Original Notice**

**Supplemental Notice to WSR**

**Continuance of WSR**

**Preproposal Statement of Inquiry was filed as WSR 22-17-142 ; 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); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) 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 recently adopted rules to ensure consistency and alignment with best practices.

**Hearing location(s):**

**Date:**                      **Time:**                      **Location:** (be specific)                      **Comment:**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b> (be specific)	<b>Comment:</b>
June 2, 2023	9:30am	<p>The Board of Osteopathic Medicine and Surgery will provide a virtual and a physical location for this hearing.</p> <p><b>Physical location:</b></p> <p>Lacey Community Center Room 1 &amp; 2 6729 Pacific Ave SE Olympia, WA 98503</p> <p><b>Virtual:</b></p> <p>Please use this link for the virtual hearing on a device, or call in to the meeting on the phone:</p> <p>Microsoft Teams meeting</p> <p><b>Join on your computer, mobile app or room device</b></p> <p><a href="https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F%2Fm">https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F%2Fm</a></p>	

	<p>eetup-join%2F19%253ameeting_NDI1MGQ2NWMtZWUxYy00YTl5LTgwOTAtMWE5OGQzZTg5YmV%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%25220id%2522%253a%25223f147261-e44e-4696-9d68-1ecb58823a4d%2522%257d&amp;data=05%7C01%7Cheather.cantrell%40doh.wa.gov%7C6ba54d3e479b40124fbf08db2b0c48cf%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638151103986924579%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQljoiv2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&amp;sdata=JuRAfkNapDHflhQtasOPGE8Mnrs%2BZVXJVFwIaBmd%2F48%3D&amp;reserved=0</p> <p>Meeting ID: 261 154 277 114 Passcode: p8WiJ9</p> <p><b>Or call in (audio only)</b></p> <p>+1 564-999-2000,,245423285# United States, Olympia</p> <p>(833) 322-1218,,245423285# United States (Toll-free)</p> <p>Phone Conference ID: 245 423 285#</p>	
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**Date of intended adoption:** 6/2/2023 (Note: This is **NOT** the **effective** date)

<p><b>Submit written comments to:</b></p> <p>Name: Becky McElhiney Address: PO Box 47852 Olympia, WA 98504-7852 Email: <a href="https://fortress.wa.gov/doh/policyreview/">https://fortress.wa.gov/doh/policyreview/</a> Fax: 360-236-2850 Other: By (date) 5/26/2023</p>	<p><b>Assistance for persons with disabilities:</b></p> <p>Contact: Becky McElhiney Phone: 360-236-4766 Fax: 360-236-2901 TTY: 711 Email: <a href="mailto:osteopathic@doh.wa.gov">osteopathic@doh.wa.gov</a> Other: By (date) 5/26/2023</p>
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**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Washington Medical Commission (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 the WMC's rulemaking for Engrossed Substitute House Bill (ESHB) 1427, the WMC received comments 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. The WMC and board recognize that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment.

The 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. The 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

**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

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Department of Health – Board of Osteopathic Medicine and Surgery

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Bechy McElhiney	111 Israel Rd SE, Tumwater WA 98501	360-236-4766
Implementation:	James Chaney	111 Israel Rd SE, Tumwater WA 98501	360-236-2831
Enforcement:	James Chaney	111 Israel Rd SE, Tumwater WA 98501	360-236-2831

**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: Becky McElhiney  
Address: PO Box 47852 Olympia, WA 98504-7852  
Phone: 360-236-4766  
Fax: 360-236-2901  
TTY: 711  
Email: osteopathic@doh.wa.gov  
Other:

No: Please explain:

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 19.85.025\(4\)](#) (does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions: Check one.**

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement: Complete this section if any portion is not exempt.**

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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:** 4/17/2023

**Name:** James Chaney

**Title:** Executive Director, Board of Osteopathic  
Medicine and Surgery

**Signature:**

A handwritten signature in blue ink that reads "U. James Chaney". The signature is written in a cursive style with a large, looped "U" and a long, sweeping "y".

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.