Attachment to CR-103p

Concise Explanatory Statement: Licensing Fee Increase Allopathic Physicians/Surgeons and Physician Assistants WAC 246-918-990 and 246-919-990

TOPIC	COMMENTS ON PROPOSED RULES	AGENCY RESPONSE
Not Sufficiently Supported or Justified	The majority of comments by individual practioners and professional associations expressed strong concerns that an adequate case was not made for increasing fees so "exorbitantly." Specifically that DOH/WMC failed to: 1. Provide sufficient evidence and data to analyze and evaluate whether the fee increase is needed/validate budget deficits. 2. Provide sufficient justification for AG cost increases. 3. Show that its other revenue is insufficient to cover costs (including recent legislative appropriations). 4. Demonstrate that fees are being increased no more than necessary. 5. Provide detailed projections and cost-benefit analyses. 6. Provide specific data related to the actual costs incurred by WMC. 7. Follow best practices in State Auditor's Office audit to "review and adjust fees for each profession with sufficient frequency to ensure they fully cover costs that provide sufficient, but not excessive, reserves for that profession only."	The last licensing fee increase was ten years ago. 1. Cost increases over the past ten years include the Health Law Judge unit 195%, Adjudicated Clerks Office 100%, Attorney General (AG) 76%, commission pay 50% (directly related to the number, length, and complexity of cases worked; not an increase in commissioner's pay or number of commissioners), average commission staff salary and benefits 33% (related to classification changes by Washington State Human Resources and the state Collective Bargaining Agreement), rent 54%, and indirect charges from the Department of Health (department) 98%. 2. The commission does not have decision making authority over AG cost increases. 3. The commission's only revenue comes from licensing fees. 4. Every program must be self-supporting through licensing fees. This fee increase is required to pay the increased costs and re-build the required reserve balance within the required timeframe. The commission used fund balance projections to determine the minimum fee allowable to maintain a positive fund balance. 5. Detailed projections and cost-benefit alanyses are available in the attached cost driver doument. 6. There were numerous legislated and ongoing workload impacts, the majority of which had no revenue increase associated with them, including reconsideration requests process in 2011, demographic collection in 2011 and 2014,

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		complaint increases of 22% since 2012 and 13% since 2018, complex litigation resulting in longer hearings and more staff time, more legal challenges in federal jurisdictions outside of the administrative law setting, and delegation agreement numbers of a 41% increase since 2012. 7. The State Auditor's Office published their performance audit report, "Aligning Healthcare Professional Fees with Licensing Costs," in November 2018, to examine if the department aligns the fees it charges to healthcare professions with the costs of licensing. In response, the department continues to develop and reassess processes to review fees more consistently and enhance transparency of fund balances and fee-setting. The rule was not changed as a result of these comments.
Healthcare Enforcement and Licensing Modernization Solution (HELMS)	Confusion was expressed as to if the increased fees were intended to also cover this program cost. If so, they are requesting more transparency as to "what role it plays" and "what steps are being taken to ensure practitioners are paying only their fair share."	The fee increase includes costs for implementing HELMS. The cost of HELMS, anticipated at $8-12 annually for fiscal years 2020 through 2023, will be allocated based on the number of licensees in each program. The HELMS cost allocation will reduce the fund balance for each program in the Health Professions Account over the timeline of the project. For healthcare professionals who hold multiple credentials, the per licensee cost will be prorated between all credentials held by that individual. The rule was not changed as a result of these comments.
Funding of Opioid Rules	There was concern that the "need for this fee increase results from the expensive, time-consuming, unfunded agreement to help with implementation of the new opioid rules."	The opioid rule making costs are not related to the licensing fees and were not factored into the fee increase. The rule was not changed as a result of these comments.
Provider Shortages	Concern was expressed that increasing fees will result in fewer MDs and PAs in primary care, family practice, pediatrics, psychiatry, and the Indian Health Service to meet the current and increasing demand, especially for vulnerable populations and in rural/health care shortage areas via accelerated attrition (retirement and relocation to lower cost states), reduced recruitment viability, and decreased applications.	According to several recently published reports, the medical practice environment in Washington State (WA) ranks at or near the top in the country in nearly every positive metric including 6th best place for physicians to work in 2019, based on pay trends, health system rankings, malpractice, and regulatory environment (Medscape); 7th in best paying jobs and 7th in best health care jobs (US News); and 15th for highest physician earnings potential

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		(Wall Street Journal). According to the Commonwealth Fund, the average salary is $267,000 (of which the WA fee increase represents 0.066%); and the average specialist salary is $378,000 (fee impact of 0.047%). Health spending per capita ranks 25th lowest in the nation at $6,782, and there are 128.2 primary care practitioners/ 100,000 residents in WA, the 16th highest in nation. Ultimately, the department and commission are bound by RCW 43.70.250 that requires each health care profession be self-supporting and that the costs associated with administering each profession be borne by that program's credentialed practitioners. The rule was not changed as a result of these comments.
Impediments to Continuing Practice	Most comments were received from those in small/private/solo practice and addressed the perceived aggregation of practice cost impacts including fees for licensing, CME, DEA, board recertification, business and malpractice insurance, new documentation/electronic health record requirements, and this year's BandO tax increase. Ongoing decreased Medicaid and Medicare reimbursement and the recent elimination of balanced billing were also mentioned.	Other than practitioner licensing fees, the costs noted are not under the purview of the department. RCW 43.70.250 requires that each health care profession be self-supporting and that the costs associated with administering each profession be borne by that program's credentialed practitioners. The rule was not changed as a result of these comments.
Amount of Increase	Many commenters submitted that WA State's licensing fees are the highest in the country, up to "28 times more than other states." There were those who compared the fee increases to "taxation without representation" and "dues skimming," referencing the WMC statement that "such an increase would obviate the need to revisit fees for ten years." The concern is that raising fees "so dramatically" now to cover 10 year's worth of future anticipated expenses ("expediency") would generate more revenue than is actually needed resulting in high reserves that run the risk of a legislative sweep or DOH/WMC use for other financially struggling professions. Many expressed a preference for gradually increasing fees over a longer period of time.	No citations were provided relative to the comments that WA State fees are the highest in the country, and commission research data does not support these claims from both a domestic and international perspective. Note that medical boards and commissions throughout the country are created by respective state legislatures to be composed of, and function in, widely varied capacities, rendering it impossible to make accurate side by side comparisons. Current reserve predictions under the new fee show slow growth of reserves over six years to meet OFM guidelines of 12.5%. The commission has committed to reviewing fee sufficiency on a two-year cycle. Due to significant feedback from licensees and stakeholders, the rule was change in response to these

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		comments and concerns. The proposed fee increase was reduced from $880 to $824 for physicians and from $265 to $247 for physician assistants. This aligns with the preferences expressed by stakeholders to have a more gradual increase over a longer period of time.
Budget Management	Several comments questioned the commission's fiduciary actions and intent, suggesting that funds are not being managed properly ("committing fraud") and that cost-cutting measures be undertaken prior to increasing practitioner fees. There were some who disagreed with "using a fee increase to cover possible litigation against the WMC" and suggested the commission instead purchase malpractice insurance. Others alluded to feeling financially punished for having to cover "discipline and litigation" costs for those not in compliance with the laws and rules, and for "commission overreach." It was also offered that "DOH should be nimble and adopt LEAN practice." Also, "fee increases should only occur to cover the administrative burdens associated with the physical act of licensure."	Department and commission estimates of profession growth did not occur as predicted, and costs increased much more than expected (see first response above). Numerous internal and external checks and balances in the commission and department processes are in place to prevent mismanagement from occurring. Litigation and torts are a direct result of practitioner actions and part of the cost of regulation. The department and commission have consistently implemented LEAN continuous process improvement practices since 2012 including: 1. Electronic newsletter conversion – $100,000/year. 2. Electronic case files conversion – $150,000/year. 3. Reduction in processing time for complaints by 44%. 4. Reduction in case review time by seven days. 5. Staff time and travel cost savings through elimination of meetings around the state. 6. Savings of board pay and travel by restricting attendance of pro tem commissioners at meetings. 7. Implementation of a formal procedure for cost recovery negotiations that requires 80% of costs to be recovered for informal discipline. Ultimately, RCW 43.70.250 requires that each health care profession be self-supporting and that the costs associated with administering each profession be borne by that program's credentialed practitioners. The rule was not changed as a result of these comments.
Prorating Fees	There were requests to prorate licensing fees based on practitioner income, years in practice/"senior doctors", specialty type, and for new	The commission can only issue a physician and surgeon, or a physician assistant, license within the limits of their

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	med school graduates. One orthopedic surgeon stated, " I would be in favor of subspecialists that have higher earning potential than primary care, paying an increased renewal fee."	their statutory authority under chapter 18.71 RCW and chapter 18.71A, respectively. The law does not specify differentiating by specialist vs. primary care. The rule was not changed as a result of these comments.
Stakeholder Process	Comments were made that "outreach did not include town halls, in person or virtually, to discuss the medical licensure fee increase," as opposed to the opioid rules stakeholder work last year. Also that "the current proposed rule should be delayed until there is adequate stakeholder discussion and further financial analysis," a reference to HB 1753 that will require a CR-101. Some requested "incremental financial updates."	In the spirit of increased transparency, the commission has been conducting stakeholder work since last year, well in advance of the statutory requirements, including offering a well-publicized public workshop in March 2019 prior to the filing of the CR-102, in addition to social media outreach, and communication with the Washington State Medical Association (WSMA) Board of Trustees. The rule was not changed as a result of these comments.
Impact to Triple and Quadruple Aims of Healthcare Reform	"Counterproductive."	This initiative is not related to the licensing fee increase, as the triple and quadruple aim is a broad based federal effort. The rule was not changed as a result of these comments.
Other	"Regulatory costs should be borne to some extent by those it benefits, i.e. the citizens (patients) of our state."	RCW 43.70.250 specifically states that the cost of regulation must be borne by the profession through licensing fees – not the public or general fund. The rule was not changed as a result of these comments.