



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: July 27, 2023

TIME: 3:03 PM

WSR 23-16-072

Agency: Department of Health - Board of Optometry

- Original Notice
Supplemental Notice to WSR
Continuance of WSR

- Preproposal Statement of Inquiry was filed as WSR 23-01-046; 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: Updating rules about the health profession monitoring program for the optometry profession. WAC 246-851-440 through 246-851-470. The Board of Optometry (board) is proposing amendments to update terms and make technical corrections regarding the health professional monitoring program terminology to update language changes made by Substitute Senate Bill (SSB) 5496 (chapter 43, Laws of 2022).

Hearing location(s):

Date:09/08/2023 Time: 9:00am In Person: Labor & Industries
7273 Linderson Way S.W., Room S119
Tumwater, WA 98501

Comment:

Link to Virtual Meeting:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQ3NzA2NDEtNDI5Yi00ZTYyLThiODctMmVkMDU3ZmE2OTkx%40thread.v2/0?content=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22b0a413cc-861e-438f-ad33-52df6d9a4283%22%7dMicrosoft Teams meeting Join on your computer, mobile app or room device Join the meeting Meeting ID: 286 469 743 295 Passcode: BLEXQT Download Teams | Join on the Web Or call in (audio only) +1 564-999-2000,,893212425# United States, Olympia 833) 322-1218,,893212425# United States (Toll-free) Phone Conference ID: 893 212 425# Find a local number | Reset PIN

Date of intended adoption: 09/08/2023 (Note: This is NOT the effective date)

Submit written comments to:
Name: Kristina Bell, Program Manager

Assistance for persons with disabilities:
Contact: Kristina Bell

Address: Department of Health
PO Box 47852, Olympia, WA 98504-7852
Email: <https://fortress.wa.gov/doh/policyreview>
Fax: 360-236-2901
Other:
By: 08/28/2023

Phone: 360-236-4841
Fax: 360-236-2901
TTY: 711
Email: Kristina.bell@doh.wa.gov
Other:
By: 08/28/2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: For clarity, the proposed rules make technical amendments to conform existing rule language with the changes made by SSB 5496. Amendments include terminology and definitions for currently accepted language and replacing “substance abuse” with “substance use disorder.” The board is also proposing amendments to correct citations and make other general housekeeping changes.

Reasons supporting proposal: The proposed amendments are required to update the rule to match the terminology changes in SSB 5496. The changes would not affect overall licensure requirements.

Statutory authority for adoption: RCW 18.54.070, 18.130.050, 18.130.175, and 18.130.186.

Statute being implemented: RCW 18.54.070, 18.130.050, 18.130.175, and 18.130.186.

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) Board of Optometry

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Kristina Bell, Program Manager	111 Israel Rd SE, Tumwater, WA 98501	360.236.4841
Implementation: Kristina Bell, Program Manager	111 Israel Rd SE, Tumwater, WA 98501	360.236.4841
Enforcement: Kristina Bell, Program Manager	111 Israel Rd SE, Tumwater, WA 98501	360.236.4841

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:
Address:
Phone:
Fax:
TTY:

Email:

Other:

No: Please explain: The proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. It does not change the effect of the rule as is exempt under RCW 34.05.328(5)(b)(iii) and 34.05.328(5)(b)(iv).

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:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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: The proposed rules make technical amendments to conform existing rule language with the changes made in SSB 5496. Changes include removing the term "impaired" and replacing "substance abuse" with "substance use disorder".

(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: 03/10/2023

Name: William Prothero, Optometrist

Title: Chair, Board of Optometry

Signature:



AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

WAC 246-851-440 Philosophy governing voluntary substance ((abuse)) use disorder monitoring programs. The board recognizes the need to establish a means of proactively providing early recognition and treatment options for optometrists whose competency may be impaired due to ~~((the abuse of drugs or alcohol))~~ substance use disorder. The board intends that such optometrists be treated, and their treatment monitored so that they can return to or continue to practice their profession in a way which safeguards the public. To accomplish this the board shall approve voluntary substance ((abuse)) use disorder monitoring programs and shall refer optometrists impaired by substance ((abuse)) use disorder to approved programs as an alternative to instituting disciplinary proceedings as defined in RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

WAC 246-851-450 ((Terms used in WAC 246-851-440 through 246-851-470.)) Definitions. The definitions in this section apply in WAC 246-851-440 through 246-851-470 unless the context clearly requires otherwise.

(1) "Aftercare" means that period of time after intensive treatment that provides the optometrist and the optometrist's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

(2) "Approved substance ((abuse)) use disorder monitoring program" or "approved monitoring program" ((is)) means a program the board has determined meets the requirements of the law and the criteria established by the board in WAC 246-851-460 which enters into a contract with optometrists who have substance ((abuse)) use disorder problems regarding the required components of the optometrist's recovery activity and oversees the optometrist's compliance with these requirements. Substance ((abuse)) use disorder monitoring programs do not provide evaluation or treatment to participating optometrists.

~~((2))~~ (3) "Approved treatment facility" means a facility recognized as such according to RCW 18.130.175(1).

(4) "Contract" ((is)) means a comprehensive, structured agreement between the recovering optometrist and the approved monitoring program stipulating the optometrist's consent to comply with the monitoring program and its required components of the optometrist's recovery activity.

~~((3)) "Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 70.96A.020(2) or 69.54.030 to provide intensive alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out-of-state must be equivalent to the standards required for approval under RCW 70.96A.020(2) or 69.54.030.~~

~~(4-))~~ (5) "Health care professional" means an individual who is licensed, certified, or registered in Washington to engage in the delivery of health care to patients.

(6) "Impaired" or "impairment" means the inability to practice optometry with reasonable skill and safety to patients by reason of a health condition.

(7) "Random drug screens" means laboratory tests to detect the presence related to a substance use disorder in body fluids which are performed at irregular intervals not known in advance by the person being tested.

(8) "Substance ((abuse)) use disorder" means the impairment, as determined by the board, of an optometrist's professional services by any addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

~~((5) "Aftercare" is that period of time after intensive treatment that provides the optometrist and the optometrist's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.~~

~~(6-))~~ (9) "Support group" ((is)) means a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which optometrists may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

~~((7-))~~ (10) "Twelve step groups" ((are)) means groups such as alcoholics anonymous, narcotics anonymous and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.

~~((8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person being tested.~~

~~(9) "Health care professional" is an individual who is licensed, certified, or registered in Washington to engage in the delivery of health care to patients.))~~

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

WAC 246-851-460 Approval of ((substance abuse)) monitoring programs. The board shall approve the monitoring program~~((s-))~~ which shall participate in the board's substance ((abuse)) use disorder monitoring program. A monitoring program approved by the board may be contracted with an entity outside the department but within the state, out-of-state, or a separate structure within the department.

(1) The approved monitoring program shall not provide evaluation or treatment to the participating optometrists.

(2) The approved monitoring program staff shall have the qualifications and knowledge of both substance ((abuse)) use disorder and the practice of optometry as defined in this chapter to be able to evaluate:

- (a) Clinical laboratories;
- (b) Laboratory results;

(c) Providers of substance ((abuse)) use disorder treatment, both individuals and facilities;

(d) Support groups;

(e) The optometry work environment; and

(f) The ability of the optometrist to practice with reasonable skill and safety.

(3) The approved monitoring program shall enter into a contract with the optometrist and the board to oversee the optometrist's compliance with the requirements of the program.

(4) The approved monitoring program may make exceptions to individual components of the contract on an individual basis.

(5) The approved monitoring program staff shall determine, on an individual basis, whether an optometrist will be prohibited from engaging in the practice of optometry for a period of time and what restrictions, if any, are placed on the optometrist's practice.

(6) The approved monitoring program shall maintain records on participants.

(7) The approved monitoring program shall be responsible for providing feedback to the optometrist as to whether treatment progress is acceptable.

(8) The approved monitoring program shall report to the board any optometrist who fails to comply with the requirement of the monitoring program.

(9) The approved monitoring program shall receive from the board guidelines on treatment, monitoring, and limitations on the practice of optometry for those participating in the program.

AMENDATORY SECTION (Amending WSR 92-06-030, filed 2/26/92, effective 3/28/92)

WAC 246-851-470 Participation in approved ((substance abuse)) monitoring program. (1) In lieu of disciplinary action, the optometrist may accept board referral into the approved ((substance abuse)) monitoring program or voluntary substance use disorder monitoring program.

(a) The optometrist shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care ((professional(s))) professionals with expertise in chemical dependency. ((The person(s) performing the evaluation shall not also be the provider of the recommended treatment.))

(b) The optometrist shall enter into a contract with the board and the approved ((substance abuse)) monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The optometrist shall undergo intensive substance ((abuse)) use disorder treatment in an approved treatment facility.

(ii) The optometrist shall agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber as defined in RCW 69.41.030 and 69.50.101.

(iii) The optometrist shall complete the prescribed aftercare program of the intensive treatment facility, which may include individual ((and/or)) or group psychotherapy.

(iv) The optometrist shall cause the treatment counselor(~~(s)~~) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis, and goals.

(v) The optometrist shall submit to random drug screening as specified by the approved monitoring program.

(vi) The optometrist shall attend support groups facilitated by a health care professional (~~(and/or twelve)~~) or 12 step group meetings as specified by the contract.

(vii) The optometrist shall comply with specified employment conditions and restrictions as defined by the contract.

(viii) The optometrist shall sign a waiver allowing the approved monitoring program to release information to the board if the optometrist does not comply with the requirements of this contract.

(c) The optometrist is responsible for paying the costs of the physical and psychosocial evaluation, substance (~~(abuse)~~) use disorder treatment, and random drug screens.

(d) The optometrist may be subject to disciplinary action under RCW 18.130.160 if the optometrist does not consent to be referred to the approved monitoring program, does not comply with specified employment restrictions, or does not successfully complete the program.

(2) An optometrist who is not being investigated by the board or subject to current disciplinary action or currently being monitored by the board for substance (~~(abuse)~~) use disorder may voluntarily participate in the approved substance (~~(abuse)~~) use disorder monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 for their substance (~~(abuse)~~) use disorder, and shall not have their participation made known to the board if they meet the requirements of the approved monitoring program:

(a) The optometrist shall undergo a complete physical and psychological evaluation before entering the approved monitoring program. This evaluation shall be performed by health care (~~(professional(s))~~) professionals with expertise in chemical dependency. (~~(The person(s) performing the evaluation shall not also be the provider of the recommended treatment.)~~)

(b) The optometrist shall enter into a contract with the approved substance (~~(abuse)~~) use disorder monitoring program to comply with the requirements of the program which shall include, but not be limited to:

(i) The optometrist shall undergo intensive substance (~~(abuse)~~) use disorder treatment in an approved treatment facility.

(ii) The optometrist shall agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(iii) The optometrist shall complete the prescribed aftercare program of the intensive treatment facility, which may include individual (~~(and/or)~~) or group psychotherapy.

(iv) The optometrist shall cause the treatment counselor(~~(s)~~) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis, and goals.

(v) The optometrist shall submit to random drug screening as specified by the approved monitoring program.

(vi) The optometrist shall attend support groups facilitated by a health care professional (~~(and/or twelve)~~) or 12 step group meetings as specified by the contract.

(vii) The optometrist shall comply with employment conditions and restrictions as defined by the contract.

(viii) The optometrist shall sign a waiver allowing the approved monitoring program to release information to the board if the optometrist does not comply with the requirements of this contract.

(c) The optometrist is responsible for paying the costs of the physical and psychosocial evaluation, substance ((abuse)) use disorder treatment, and random drug screens.

(3) (~~The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in subsections (1) and (2) of this section. Records held by the board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.~~) Treatment and pretreatment records shall be confidential as provided by law in chapters 42.56 and 42.17A RCW.