



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: September 23, 2020

TIME: 11:33 AM

WSR 20-19-146

Agency: Department of Health

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 19-20-100 ; 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 246-828-025 and 246-828-290, Hearing and Speech. The Department of Health (department), in consultation with the Board of Hearing and Speech (board) is proposing amending WACs 246-828-025 and 246-828-290 to implement Engrossed Senate Bill 5210 (chapter 183, Laws of 2019) addressing consumer notification. The department is also proposing technical changes or changes to improve clarity.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 6, 2020	9:00 am	<p>In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Washington Medical Commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington State. A virtual public hearing, without a physical meeting space, will be held instead.</p> <p>To access the via GoToWebinar: https://attendee.gotowebinar.com/register/544356521689990159</p> <p>Via computer, tablet or smartphone: https://attendee.gotowebinar.com/register/544356521689990159 webinar ID: 209-115-987</p> <p>Via Phone: United States: +1 (631) 992-3221 Access Code: 989-794-062</p>	

Date of intended adoption: 11/13/2020 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Kim-Boi Shadduck, Program Manager

Address: Department of Health

PO Box 47852

Olympia, WA 98504-7852

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

Fax: 360-236-2901

Other:

By (date) 11/06/2020

Assistance for persons with disabilities:

Contact Kim-Boi Shadduck

Phone: 360-236-2912

Fax: 360-236-2901

TTY: 711

Email: kimboi.shadduck@doh.wa.gov

Other:

By (date) 10/30/2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposal would define "hearing assistive technologies" and establish consumer notification requirements regarding those technologies prior to the purchase of hearing device. By requiring patient notification, the legislature intends to increase consumer awareness of benefits and uses of the different types of hearing instruments and their associated technologies, including compatibility with assistive listening systems.

Reasons supporting proposal: Engrossed Senate Bill 5210 (chapter 183, Laws of 2019) requires the department to adopt or amend rules. In addition, in order to be enforceable, the requirements must be in rule. There is no alternative to rulemaking because the legislation requires the department of to adopt rules.

Statutory authority for adoption: RCW 18.35.310

Statute being implemented: RCW 18.35.310

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) Department of Health

Private

Public

Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting: Manager	Kim-Boi Shadduck, Program	111 Israel Rd SE Tumwater, WA 98501	360-236-29-12
Implementation: Manager	Kim-Boi Shadduck, Program	111 Israel Rd SE Tumwater, WA 98501	360-236-2912
Enforcement: Manager	Kim-Boi Shadduck, Program	111 Israel Rd SE Tumwater, WA 98501	360-236-2912

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: Kim-Boi Shadduck, Program Manager

Address: Department of Health
PO Box 47852-7852
Olympia, WA 98507-7852

Phone: 360-236-2912

Fax: 360-236-2901

TTY: 711

Email: kimboi.shadduck@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. The proposed rule only pertains to providers and does not impact small businesses.

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: 09/23/2020

Signature:

Name: Jessica Todorovich for John Wiesman, DrPH, MPH



Title: Chief of Staff for Secretary of Health

WAC 246-828-025 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the council on academic accreditation in audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province. Institutions where education was obtained outside of the United States or Canada has an equivalency determination completed by the board. This program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.

(c) A board-approved institution must integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Direct supervision" means the supervisor is on-site and in view during the procedures or tasks.

(3) "Hearing assistive technologies" means assistive listening systems or devices that increase the intelligibility and clarity of speech in environments where hearing instruments alone may not provide optimal comprehension including, but not limited to, telecoil and Bluetooth.

(4) "Indirect supervision" means the procedures or tasks are performed under the supervising speech-language pathologist's, audiologist's, or hearing aid specialist's overall direction and control and the supervisor is accessible, but the supervisor's presence is not required during the performance of procedures or tasks.

~~((4))~~ (5) "Place or places of business" means a permanent address open to the public, which may include an "establishment" as defined in RCW 18.35.010(6), where a licensee engages in the fitting and dispensing of hearing instruments.

~~((5))~~ (6) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct patient or client contact, consultations, recordkeeping, and administrative duties relevant to a bona fide program of clinical work. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

~~((6))~~ (7) "Purchaser" or "buyer" means a patient, client, or legally authorized representative.

WAC 246-828-290 Purchaser rescission rights and right to notice of hearing assistive technologies. In addition to the receipt and disclosure information required by RCW 18.35.030, 18.35.185, 63.14.040 and 63.14.120, every retail agreement for the sale of hearing instruments must contain or have attached the following notice to buyer in twelve point font or larger. The language in part 1 under "Notice to Buyer" is intended to have the same legal effect as the notices required in RCW 63.14.040(2) and 63.14.120(3) and may be substituted for those notices.

The rights summarized in the "Notice to Buyer" must be made known to the purchaser before the contract is executed. The licensee must provide this "Notice to Buyer" in writing to the purchaser. The purchaser must acknowledge receipt of the "Notice to Buyer" by signing his or her name in the designated space following the "Notice to Buyer."

Notice to Buyer

NOTICE TO BUYER UNDER WASHINGTON STATE LAW CHAPTER 18.35 RCW

Do not sign this agreement before you read it or if any spaces intended for the agreed terms are blank. You are entitled to receive a copy of this agreement at the time you sign it. The seller's business address must be shown on the agreement.

Section 1 CANCELLATION - WITHIN THREE DAYS

You may cancel this agreement within three days, without explaining your reasons, if the seller solicited it in person and you signed it at a place other than the seller's business address.

To cancel this agreement without explaining your reasons, you must notify the seller in writing that you are canceling the agreement. You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be postmarked or delivered by midnight of the third business day after you signed this agreement.

Any merchandise you received under this agreement must be in its original condition. You must return it to the seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement.

You will incur no additional liability for canceling the agreement.

Section 2 RESCISSION - WITHIN THIRTY DAYS

You may rescind (or terminate) the agreement within thirty days, for reasonable cause. This thirty-day period is called the "rescission period."

To rescind this agreement, you must notify the seller in writing that you are rescinding the agreement for reasonable cause pursuant to RCW 18.35.185(1). (Reasonable cause does not include cosmetic concerns or a mere change of mind.) You may deliver the written notice to the

seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be postmarked or delivered by midnight of the thirtieth day after delivery of the hearing instrument.

Any merchandise you received under this agreement must be in its original condition, except for normal wear and tear. You must return it to the seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement. However, for each hearing instrument you return, the seller may keep either one hundred fifty dollars or fifteen percent of the total purchase price, whichever is less, plus the price originally charged for custom-made earmolds.

The seller must refund your money and return your traded goods, or have them postmarked and in the mail to you, within ten business days after receiving your notice of rescission.

You will incur no additional liability for rescinding the agreement.

Section 3 EXTENSION OF RESCISSION PERIOD

If you notify the seller within the thirty-day rescission period that your hearing instrument has developed a problem that constitutes reasonable cause to rescind the agreement or that prevents you from evaluating your hearing instrument, the seller must extend the rescission period. The rescission period stops running on the date you notify the seller of the problem and starts running again on the date the seller notifies you that your hearing instrument is ready for redelivery.

You and the seller may agree to a rescission period longer than thirty days.

Whenever the rescission period is extended, the seller must provide you written notice of the last date upon which you may demand a refund and return of traded goods.

Section 4 NOTICE OF HEARING ASSISTIVE TECHNOLOGIES

Prior to initial fitting and purchase you must be informed, both orally and in writing, about the uses, benefits, and limitations of current hearing assistive technologies. Hearing assistive technologies can supplement your hearing aid and increase the intelligibility and clarity of speech in environments where hearing instruments alone may not provide optimal comprehension. Hearing assistive technology options can allow hearing aids to connect wirelessly and through direct connection to other electronic sound sources and assistive listening systems, compliant with the Americans with Disabilities Act.

I am aware that the hearing instrument(s) referenced in this document include (please select all that apply):

- Telecoil
- Bluetooth
- Other technology (specify) _____

By signing this receipt, you acknowledge that you have been informed of your rescission rights and hearing assistive technologies and that you have read and understand these rights.

Signature of Purchaser

Date

Signature of Seller

Date

Delivery Acknowledgment - Signature of
Purchaser

Date