



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: August 11, 2021

TIME: 11:10 AM

WSR 21-17-062

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 246-945-014, Electronic prescribing mandate waiver. The Pharmacy Quality Assurance Commission (commission) and the Department of Health (department) have jointly adopted a new section of rule to outline the electronic prescribing mandate, exceptions allowing a waiver, and related waiver process as required by Substitute Senate Bill (SSB) 5380 passed during the 2019 legislative session.

Citation of rules affected by this order:

New: WAC 246-945-014

Repealed: None

Amended: None

Suspended: None

Statutory authority for adoption: RCW 69.50.312; SSB 5380 (chapter 314, Laws of 2019)

Other authority: N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 21-08-059 on 04/05/2021 (date).

Describe any changes other than editing from proposed to adopted version: The department and commission made three non-substantive edits to the proposed rule as a result of the public hearing. First, in subsection (3)(a)(iii) "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)(iii) would expire before the department expects compliance.

The second change from the proposed to adopted version is 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 exhaustive list.

Finally, the third change is in subsection (4). In response to comments from interested parties, the department and commission added the word "knowingly" prior to "submitting a false attestation is grounds..." This addition clarifies that the department and licensing boards and commissions will only pursue disciplinary action against a provider for non-compliance with RCW 69.50.312 and WAC 246-945-014 if the practitioner knowingly submits a false attestation.

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: June 4, 2021

Name: Kristin Peterson, JD for Umair A. Shah, MD, MPH/Teri Ferreira, RPh

Title: Deputy Secretary, Policy and Planning for Secretary of Health/ Pharmacy Quality Assurance
Commission Chair

Signature:



NEW SECTION

WAC 246-945-014 Electronic prescribing mandate waiver. (1) A practitioner may submit an attestation to the department for a waiver from the electronic prescribing mandate in RCW 69.50.312, if the practitioner is experiencing an economic hardship, technological limitations not reasonably in the control of the practitioner, or other exceptional circumstance. A practitioner does not need to submit a waiver if exempted from the mandate under RCW 69.50.312 (2)(a) through (j). A practitioner must submit an attestation for the waiver using forms provided by the department. The department shall deem the waiver granted upon submission of an attestation and the practitioner will be deemed exempt under RCW 69.50.312 (2)(k).

(2) A practitioner who has submitted an attestation for a waiver from the mandate in RCW 69.50.312 is exempt from the electronic prescribing mandate for the calendar year in which the attestation is signed, beginning with the effective date of this section.

(a) For economic hardship and technical limitations, a practitioner may attest to the need for a waiver up to three times, giving the practitioner three years to come into compliance with the mandate.

(b) There is no limit on the number of other exceptional circumstance waivers under subsection (3)(c) of this section that a practitioner can submit.

(3) A practitioner required to electronically prescribe under RCW 69.50.312 may submit an attestation for a waiver from this mandate due to:

(a) Economic hardship in the following circumstances:

(i) A bankruptcy in the previous year or submitted an attestation for a waiver under this chapter due to a bankruptcy in the previous year;

(ii) Opening a new practice after January 1, 2020;

(iii) Intent to discontinue operating in Washington prior to December 31, 2022; or

(iv) Operating a low-income clinic, that is defined as a clinic serving a minimum of thirty percent medicaid patients.

(b) Technological limitations outside the control of the practitioner if the practitioner is in the process of transitioning to an electronic prescription system.

(c) Other exceptional circumstances include:

(i) The practitioner is providing services at a free clinic;

(ii) The practitioner generates fewer than one hundred prescriptions of Schedules II through V drugs in a one-year period, including both new and refill prescriptions;

(iii) The practitioner is located in an area without sufficient internet access to comply with the e-prescribing mandate; or

(iv) 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, unforeseeable barriers to electronic prescribing, or unforeseen events that result in a statewide emergency.

(4) The department may audit waiver attestations submitted by a practitioner to determine compliance with this chapter. Knowingly submitting a false attestation is grounds for disciplinary action against a practitioner's license by the appropriate disciplinary authority as well as fines pursuant to RCW 69.50.312(5).