WASHINGTON
Medical
Commission

Licensing. Accountability. Leadership.

Rules Workshop

Opioid Prescribing Patient Exemptions

June 2, 2021 – 1:00 pm to 3:00 pm

GoToWebinar

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Rule Workshop Notice

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Rulemaking
The Washington Medical Commission (commission) has officially filed a CR-101 with the Office of the Code Reviser on March 26, 2020. The WSR# is 20-08-070.

As part of the commission's rule making for ESHB 1427, enacted in 2017 and codified as RCW 18.71.800, the commission 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 (PMP) 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 commission recognizes that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment.

Since the rules related to ESHB 1427 became effective January 1, 2019, the commission has continued to receive comments related to LTAC and nursing home patients. To address this issue, the commission filed an interpretive statement: "Exempting Patients in Nursing Homes and Long-Term Acute Care Hospital from the Opioid Prescribing Rules." While the interpretive statement has helped to curb the comments and concerns from prescribers, the commission feels this important exemption should be in rule. Furthermore, this could allow us the [to] rescind the interpretive statement.

The commission has also received a comment regarding patients in Residential Habilitation Centers (RHC) that they are also similarly situated to LTAC and nursing home patients. As such, the commission may also consider exempting patients in RHCs.

Adding these exemptions could accomplish several things. First, it may allow patients in LTACs and nursing homes to receive the necessary care in an efficient manner. The practitioners would not need to perform a duplicative history and physical or PMP check. Second, it would allow the commission to rescind their interpretive statement and physicians and physician assistants could rely on the rule.

Opioid Prescribing Patient Exemptions Rules Workshop Meeting
In response to the filing, the Commission will conduct an open public rules workshop on Wednesday, June 2, 2021, from 1:00 pm to 3:00 pm via GoToWebinar.

Please register for this workshop at:
https://attendee.gotowebinar.com/register/6834568430326738O6
After registering, you will receive a confirmation email containing information about joining the webinar.

This meeting will be open to the public.

In response to the COVID-19 public health emergency, and to promote social distancing, the Medical Commission will not provide a physical location for this meeting. A virtual public meeting, without a physical meeting space, will be held instead.

The purpose of the rules workshop will be to:

- Review the rules process;
- Discuss draft language;
- Discuss comments received;
- Invite committee members and members of the public to present draft rule language; and
- Discuss next steps

Interested parties and the general public are invited to participate in the rules workshops or provide comments on draft rules. For continued updates on rule development, interested parties are encouraged to join the Commission's rules GovDelivery.

For more information, please contact Amelia Boyd, Program Manager, Washington Medical Commission at (360) 236-2727 or by email at amelia.boyd@wmc.wa.gov.

*CR means Code Reviser

Rules Workshop Agenda

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In response to the COVID-19 public health emergency, and to promote social distancing, the Medical Commission will not provide a physical location for this meeting. A virtual public meeting, without a physical meeting space, will be held instead. The registration link can be found below.

Wednesday, June 2, 2021 – 1:00 pm to 3:00 pm

Opioid Prescribing Patient Exemptions Pre-Proposal Rules

- Housekeeping
- Open workshop
- Overview of rules process
- Discuss draft language
- Comments
- Next steps
- Close workshop

To request this document in another format, call 1-800-525-0127. Deaf or hard of hearing customers, please call 711 (Washington Relay) or email civil.rights@doh.wa.gov.

WSR 20-08-070
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH
(Washington Medical Commission)
[Filed March 26, 2020, 11:17 a.m.]

Subject of Possible Rule Making: WAC 246-918-801 (physician assistants) Exclusions and 246-919-851 (physicians) Exclusions. The Washington medical commission (commission) is considering amendments to expand the types of patients who are exempt from certain provisions of rule when being prescribed opioid drugs.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.71.017, 18.130.050, 18.71A.800, and 18.71A.100.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: As part of the commission's rule making for ESHB 1427, enacted in 2017 and codified as RCW 18.71.800, the commission 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 (PMP) 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 commission recognizes that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment.

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Adding these exemptions could accomplish several things. First, it may allow patients in LTACs and nursing homes to receive the necessary care in an efficient manner. The practitioners would not need to perform a duplicative history and physical or PMP check. Second, it would allow the commission to rescind their interpretive statement and physicians and physician assistants could rely on the rule.

This rule would meet the intent of the APA by moving the commission's interpretive statement to rule.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-236-2727, TTY 711, email amelia.boyd@wmc.wa.gov, website wmc.wa.gov.

Additional comments: To join the interested parties email list, please visit https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153.

March 25, 2020
Melanie de Leon
Executive Director

Washington Health Care Association
Honesty & Integrity · Advocacy
Customer Service
Collaboration · Stewardship

August 22, 2018

M E M O R A N D U M

TO: Medical Quality Assurance Commission

FROM: Lauri St. Ours, Director of Government & Legislative Relations
Washington Health Care Association

RE: Proposed Chapters 246-919 and 246-918 WAC

Thank you for the significant effort that has gone into the work on proposed opioid prescribing regulations for Chapter 246-919 WAC for allopathic physician assistants and Chapter 246-918 WAC for allopathic physicians.

Today we testify with concerns about the proposed regulations, and are seeking an exemption for skilled nursing facilities. Like hospitals, skilled nursing facilities are institutional in nature, and patients do not manage or handle their own medications. This is not an outpatient setting, and there are operational issues for skilled nursing facilities that could drive regulatory challenges beyond those contemplated in these regulations. We believe that this is unintended, and are offering language that would exempt skilled nursing facilities from these regulations.

Other states have already recognized that skilled nursing facilities should be treated like hospitals in this body of regulation; among those are the states of Michigan, Ohio and Arizona.

Pain management is a significant job for the professional staff at skilled nursing facilities. In general, patients undergoing rehabilitation come to the skilled nursing facility under hospital orders, and with a completed history and physical. Skilled nursing facilities are not staffed with 24/7 attending providers, and patients can be admitted at all times throughout the day. Like hospitals, the goal for these patients is rehab and discharge to a home or community-based care setting. The average length of stay for these patients is generally less than 30 days.

When admitted from the hospital, a patient typically is admitted with a limited prescription for pain medications; in current practice, the attending provider may not conduct an in-person history and physical immediately on arrival. In some settings, this may take up to 30 days. However, the attending physician is able to authorize a prescription to continue pain management on review of transfer orders. Pain management is critical for post-hospital care and the treatment of surgical procedures. Continuity of pain management is essential, and is

Washington Health Care Association
303 Cleveland Avenue, Suite 206
Tumwater, WA 98502
360-352-3304

monitored and regulated. With the current drafted regulations, there no congruency in policy, given that hospitals are exempted but the post-acute facility is following hospital orders until the patient is seen by the attending physician.

We appreciate the significant effort that has gone into these regulations, and believe that it is an oversight to treat a skilled nursing facility like an outpatient setting.

Providers have identified two major concerns with the rules currently being considered:

1) Requirements for a history and physical prior to prescribing opioids; and
2) The requirement to check the PMP prior to issuing a prescription.

Requirements for a History and Physical

Skilled nursing facility clients admitted from the hospital have already undergone the history and physical. Prescribers are not on premises and thus are not always available to complete an additional history and physical prior to prescribing pain medications. Currently, nursing staff is able to communicate with prescribers for verbal orders and with pharmacies to ensure uninterrupted delivery of these medications; they are held to state and federal standards regarding performance of these duties. The requirement for a history and physical is an additional, unnecessary step in an already heavily-regulated environment which has several safeguards on admission, including a pharmacist review of medications

Requirement to Check the PMP Prior to Issuing a Prescription

We are concerned that it is not operationally feasible for a provider to access the prescription monitoring program (PMP), and question whether the information serves a real purpose. For example, it isn't feasible for a provider to review the PMP for after hours and/or emergency direct admissions in order to continue the hospital orders. Under the proposed regulations, a provider could not call the pharmacy with a request for an emergency dispensing or verbal prescription until they can check the PMP. This has the potential to delay the course of treatment, and of driving regulatory sanction.

Finally, and as it relates to skilled nursing facility patients, our providers question whether the information provided is helpful or relevant, given the fact that the controlled substances are mostly likely started in a hospital, so the hospital data will not be in the PMP. Additionally, orders that are started or continued in the skilled nursing facility and filled by the facility/institutional pharmacy will not be in the PMP database. However, they are in the pharmacy and in the skilled nursing facility database in the form of a MAR which includes all the details about the drug administration and is monitored at least monthly by consulting pharmacists.

Additional Issues: Drugs are not controlled by patients, so we question whether the patient notification provisions are relevant or helpful.

We recommend that skilled nursing facilities be added to the exclusions found in Chapter 246-918-801 WAC and in Chapter 246-919-851, and we stand ready to work with you on this issue.

Thank you again for your efforts.

Washington Health Care Association
303 Cleveland Avenue, Suite 206
Tumwater, WA 98502
360-352-3304

From: Farrell, Michael (WMC)
To: Boyd, Amelia (WMC)
Subject: FW: Exempting WA State Facilities from Opioid Prescribing Rules (Proposed changes)
Date: Friday, May 31, 2019 3:20:15 PM

Hi Amelia,

Is it possible to include this email with the comments on the proposed change to the opioid rules? I know we are early in the process.

Thanks.

Mike

Michael L. Farrell, JD
Policy Development Manager, Washington Medical Commission
509.329.2186
Were you satisfied with the service you received today? Yes or No

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From: Dahl, Christian [redacted]
Sent: Wednesday, May 15, 2019 9:54 AM
To: Farrell, Michael (WMC) <michael.farrell@wmc.wa.gov>
Subject: Exempting WA State Facilities from Opioid Prescribing Rules (Proposed changes)

Greetings,
We have spoken together in the past regarding some of the issues we encounter at the State Operated DDA Residential Habilitation Centers. We still have the four across the state with both Nursing Facility (NF) and Intermediate Care Facilities for the Intellectually Disabled (ICF-ID) designations. I now manage the medical services from an administrative position here in our Lacey DDA offices. Our total census is down to 714 clients, and will probably continue to decline.

I saw that you will be presented the proposed changes to the Opioid prescribing rules tomorrow. Dr. Roberts had mention during the UW Opioid Conference April 15th that they were attempting to exclude Nursing facilities from some of the PMP requirements, but I had not seen any specific language. The CR-103 mentioned in the last newsletter by Amelia Boyd has the edits from the 1/1/19 WSR 18-23-061 Permanent Rules. The WAC 246-918-801 Exclusions and WAC 246-919-851 Exclusions have included Hospitalization for more than 24 hours.

I have not seen the latest proposed language, but I would like to ask that you consider adding the Residential Habilitation Centers to the exclusion list. We do not always fit under typical Long Term Care definitions, and although some have advocated we could be a hospital, we definitely do not want to be in that grouping. If you are considering adding Nursing Facilities, it would be helpful if you would specifically list either RHC's, or ICF-ID and NF facilities. Our Nursing Facilities do no always match the Nursing Home definitions, so we try to use the "facilities" term.

All of our clients have their medications tightly monitored and administered by nurses, similar to other NF or hospital situations. In addition, with low turnover, almost all of their opioid history is already known. In addition, we previously pulled prescribing histories upon admission, and the PMP makes that even easier for new admissions. To query the PMP system for new orders will mean looking at our own entries over 99% of the time. We already do that within our pharmacy program for each prescription.

The exclusion does not negate the need for good pain management and monitoring. Fortunately we already have that requirement within CMS regulations, including monthly to quarterly pharmacy and interdisciplinary team review of all medications prescribed. We will continue this under both sets of rules and regulations.

I will not be able to attend your meetings tomorrow, but any consideration for updating the exclusions to include the include us, along with the proposed Nursing Homes and LTC facilities.

Thank you for your consideration at this last minute. If you have any further questions, please let me know.

Christian Dahl, M.D. / [redacted]

From: Stanford Tran
To: Boyd, Amelia (WMC)
Subject: Re: FW: Exclusion Criteria to Opioid Rules
Date: Friday, June 12, 2020 9:47:49 PM
Attachments: image003.png
image004.png

Hi Amelia,

Thank you for your response. The interpretive statement you linked is very helpful.

Residential Treatment Facilities are different from Residential Habilitation Centers. They are licensed under different rules and requirements of the WAC (Washington Administrative Code). Length of stay at an RTF is usually on the order of weeks, while Residential Habilitation Centers I think should be more on the order of months.

I wonder if adding RTFs to the list of exempted facilities would be something that could be considered?

Stanford Tran, MD

On Tue, Jun 9, 2020 at 9:13 AM Boyd, Amelia (WMC) <Amelia.Boyd@wmc.wa.gov> wrote:

> Good morning Dr. Tran,
>
> Currently, there is no exemption for patients in residential treatment facilities specifically. The Commission does have this interpretive statement which excludes patients in nursing homes and LTACs. The Commission is also considering rulemaking to add nursing home, LTAC, and Residential Habilitation Center patients to the list of exempted patients. Are inpatient residential treatment facilities similar or the same as Residential Habilitation Centers?
>
> Thank you
>
> WASHINGTON Medical Commission
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>
> Amelia Boyd
> Program Manager
> Washington Medical Commission
> Office: (360) 236-2727
> Mobile: (360) 918-6336

Were you satisfied with the service you received today? Yes or No

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From: Stanford Tran [redacted]
Sent: Saturday, June 6, 2020 7:45 AM
To: WMC <Medical.Commission@wmc.wa.gov>
Subject: Exclusion Criteria to Opioid Rules

Hi,

I understand that pain management rules do not apply to "the treatment of inpatient hospital patients who are patients who have been admitted to a hospital for more than twenty-four hours" per WAC 246-919-851.

For the purpose of this definition, does an inpatient residential treatment facility count as a "hospital"?

Email is the best form of correspondence. If you need any clarifications or have any questions, please call me on my personal cell at (408) 890-7826.

Sincerely,

Stanford Tran, MD

Lead Addiction Medicine Physician

Valley Cities Recovery Place Seattle | Recovery Place Kent

Valley Cities I Behavioral Health Care

Compassion Connection Community

valleycities.org

Valley Cities | Behavioral Health Care
Compassion Connection Community
valleycities.org

Physician Assistants

WAC 246-918-801 Exclusions. WAC 246-918-800 through 246-918-935 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 who are patients who have been admitted to a hospital for more than twenty-four hours; or~~

(34) The provision of procedural medications~~.~~; or

(4) The treatment of patients who have been admitted for more than twenty-four hours in the following facilities:

(a) Acute care hospitals licensed under Chapter 70.41 RCW;

(b) Psychiatric hospitals licensed under 71.12;

(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(10);

(e) Residential treatment facilities as defined in RCW 71.12.455(7); or

(f) Residential habilitation centers as defined in WAC 388-825-089.

[Statutory Authority: RCW 18.71.017, 18.71.800, 18.71A.800 and 2017 c 297. WSR 18-23-061, filed 11/16/18, effective 1/1/19. Statutory Authority: RCW 18.71.450, 18.71A.100, 18.71.017, and 18.71A.020. WSR 11-12-025, § 246-918-801, filed 5/24/11, effective 1/2/12.]

Physicians

WAC 246-919-851 Exclusions. WAC 246-919-850 through 246-919-985 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 who are patients who have been admitted to a hospital for more than twenty-four hours; or~~

(43) The provision of procedural medications~~.~~; or

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[Statutory Authority: RCW 18.71.017, 18.71.800, 18.71A.800 and 2017 c 297. WSR 18-23-061, § 246-919-851, filed 11/16/18, effective 1/1/19. Statutory Authority: RCW 18.71.450, 18.71A.100, 18.71.017, and 18.71A.020. WSR 11-12-025, § 246-919-851, filed 5/24/11, effective 1/2/12.]