



# PREPROPOSAL STATEMENT OF INQUIRY

## CR-101 (October 2017) (Implements RCW 34.05.310)

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DATE: May 17, 2024

TIME: 1:48 PM

WSR 24-11-104

**Agency:** Department of Health – Washington Medical Commission

**Subject of possible rule making:**

Establishing the use of nitrous oxide in office based surgical settings. The Washington Medical Commission (commission) is considering amending WAC 246-919-601 to exempt the use of nitrous oxide in office-based surgical settings under certain circumstances. Additionally, the commission is considering adding a new subsection to further address the use of nitrous oxide in such settings.

**Statutes authorizing the agency to adopt rules on this subject:** RCW 18.71.017

**Reasons why rules on this subject may be needed and what they might accomplish:** In 2010, the commission implemented WAC 246-919-601 to enhance patient safety by establishing consistent standards and competency for procedures involving analgesia, anesthesia, or sedation performed in office-based settings. This rule was created to complement new legislation mandating the licensing of ambulatory surgical facilities.

It sets forth specific requirements to ensure patient safety during procedures in a physician's office. These requirements include accreditation or certification of the facility, competency standards, separation of surgical and monitoring functions, written emergency care and transfer protocols, the ability to rescue patients who enter a deeper level of sedation than intended, and the presence or immediate availability of a licensed healthcare practitioner certified in advanced resuscitative techniques appropriate for the patient's age group.

WAC 246-919-601(3)(a) provides an explicit exemption from rule requirements for procedures involving only minimal sedation. According to WAC 246-919-601(2)(e), minimal sedation is restricted to medications administered orally, intranasally, or intramuscularly. In 2020, the commission updated the rule to include "intranasal" in the definition of minimal sedation, allowing for the use of midazolam when sprayed into the nasal cavity. However, the rule does not specify whether the use of nitrous oxide qualifies as minimal sedation and thus exempts it from the rule.

Nitrous oxide, an inhaled anesthetic, produces a sedative effect dependent on the dosage and can be used for procedural sedation, general anesthesia, dental anesthesia, and managing severe acute pain. When used as the sole anesthetic agent at a concentration of 50% or less (combined with oxygen), nitrous oxide minimally affects respiration and does not induce muscle relaxation. In this capacity, nitrous oxide induces brief sedation with low risk to the patient, provided specific safeguards are in place.

Given these considerations, the commission is considering classifying the administration of nitrous oxide as minimal sedation, therefore excluding it from WAC 246-919-601. The commission filed an interpretive statement under WSR 23-23-048 titled *Establishing the use of nitrous oxide in office based surgical settings* that lays out these considerations. The purpose of this rule making is to establish the considerations in rule. The commission is also considering adding a new subsection to provide additional guidance for the use of nitrous oxide in office-based surgical settings.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** None

**Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Collaborative rulemaking

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

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Additional comments: To join the interested parties email list, please visit [https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic\\_id=WADOH\\_153](https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153)

**Date:** May 16, 2024

**Name:** Kyle Karinen

**Title:** Executive Director, Washington Medical Commission

**Signature:**

Signature on file