PROPOSED RULE MAKING

CR-102 (June 2012)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Department of Health- Medical Quality Assurance Commission

☒ **Preproposal Statement of Inquiry was filed as WSR** 15-09-139 **; 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).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR**
☐ **Continuance of WSR**

Title of rule and other identifying information: (Describe Subject)
WAC 246-918-410--Sexual Misconduct. The Medical Quality Assurance Commission (commission) is proposing rule modification to sexual misconduct standards to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by an allopathic physician assistant.

Hearing location(s): DoubleTree by Hilton, Seattle Airport/Southcenter
16500 Southcenter Parkway
Seattle, WA 98188
(206) 575-8220

Date: 11/04/2015 Time: 3:00 PM

Date of intended adoption: 11/04/2015
(Note: This is **NOT** the **effective** date)

Submit written comments to:
Name: Daidria Pittman
Address: PO Box 47866
Olympia, WA 98504-7866
e-mail: http://www3.doh.wa.gov/policyreview/
fax (360) 236-4626 by (date) 10/27/2015

Assistance for persons with disabilities: Contact Daidria Pittman by 10/30/2015
TTY (800) 833-6388 or () 711

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The proposed rule clarifies and updates the sexual misconduct rule to establish clearer standards of conduct for allopathic physician assistants under the commission's authority. It will also help allopathic physician assistants understand what constitutes sexual misconduct with any person including people who are not patients, clients, or key third parties that involves force, intimidation, lack of consent, or a conviction of a sex offense listed in RCW 9.94A.030.

Reasons supporting proposal:
Over time the commission has realized a very serious category of sexual misconduct may not be captured by current rules-sexual misconduct by an allopathic physician assistant against a person other than a patient, client, or key party. Some examples include sexual harassment of staff, incest, or other sexual assaults against family members, social acquaintances, or strangers. Updating the sexual misconduct rule will establish clearer standards of conduct and will help the commission be consistent in its enforcement activities to more fully comply with RCW 18.130.062 and Executive Order 06-03.

Statutory authority for adoption:
RCW 18.71.017 and 18.130.062

Statute being implemented:
RCW 18.130.062

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE 09/19/2015

NAME (type or print)
Melanie de Leon

SIGNATURE Melanie de Leon

TITLE
Executive Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 21, 2015
TIME: 10:11 AM

WSR 15-19-123

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Washington State Department of Health, Medical Quality Assurance Commission

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Daidria Pittman	111 Israel Road SE, Tumwater, WA 98501	(360) 236-2727
Implementation....	Melanie de Leon	111 Israel Road SE, Tumwater, WA 98501	(360) 236-2755
Enforcement.....	Melanie de Leon	111 Israel Road SE, Tumwater, WA 98501	(360) 236-2755

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:
Name:
Address:

phone
fax
e-mail

☒ No. Explain why no statement was prepared.

A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and RCW 34.05.310(4)(d), a SBEIS is not required for proposed rules that only clarify the language of a rule without changing its effect.

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
e-mail

☒ No: Please explain: The commission did not complete a cost benefit analysis under RCW 34.05.328(5)(b)(iv). Rulemaking that only clarifies language of a rule without changing its effect does not require a cost benefit analysis.

AMENDATORY SECTION (Amending WSR 06-03-028, filed 1/9/06, effective 2/9/06)

WAC 246-918-410 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician assistant" means a person licensed to practice as a physician assistant under chapter 18.71A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician assistant shall not engage in sexual misconduct with a current patient or a key third party. A physician assistant engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;

(b) Oral to genital contact;

(c) Genital to anal contact or oral to anal contact;

(d) Kissing in a romantic or sexual manner;

(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;

(f) Examination or touching of genitals without using gloves;

(g) Not allowing a patient the privacy to dress or undress;

(h) Encouraging the patient to masturbate in the presence of the physician assistant or masturbation by the physician assistant while the patient is present;

(i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;

(j) Soliciting a date;

(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician assistant.

(3) A physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician assistant:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician assistant's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the physician assistant;

(f) The nature of the patient's health problem;

(g) The degree of emotional dependence and vulnerability.

((~~(5)~~)) (6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

((~~(6)~~)) (7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

((~~(7)~~)) (8) A violation of any provision of this rule shall constitute grounds for disciplinary action.