



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Department of Health- Board of Optometry

- Preproposal Statement of Inquiry was filed as WSR 15-11-054 ; 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 246-851-370 Employed doctors of optometry, franchises and equipment use agreements. The proposed rule amends WAC 246-851-370 by deleting the first sentence relating to the relationship between salary, bonus, or other remuneration of an employed doctor of optometry and the number of patients seen or prescriptions filled.

**Hearing location(s):** Department of Health  
Creekside Two at Center Point  
20425 72nd Ave South, Room 307  
Kent, WA 98032

Date: 6/13/2016

Time: 10 a.m.

**Submit written comments to:**

Name: Lorelei Walker, Program Manager  
Address: PO Box 47852  
Olympia WA 98504-7852  
e-mail: <http://www3.doh.wa.gov/policyreview/>  
fax 360-236-2901 by (date) 06/01/2016

**Assistance for persons with disabilities:** Contact

Lorelei Walker, Program Manager by 06/01/2016

TTY (800) 833-6388 or () 711

**Date of intended adoption:** 06/13/2016

(Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The board of optometry (board) is proposing to amend WAC 246-851-370 Employed doctors of optometry, franchises and equipment use agreements. The first sentence of this rule forbids that an optometrist's salary be contingent upon the number or percentage of exams given or prescriptions filled by the optometrist. The board received a petition for rule-making asking the board to consider removing this sentence. The board finds that this language is outdated and does not reflect current practice. Removing the first sentence of the rule will provide clarity.

**Reasons supporting proposal:**

The proposed rule eliminates the restriction on compensation based on percentage of exams given while still requiring optometrists remain cognizant of their responsibilities as licensed optometrists. The rule also communicates to the licensees and the public that the optometry license is independent of different types of employment relationships. There are other regulations, such as chapter 19.68 RCW Rebating by practitioners of healing professions that provide safeguards against prohibited business practices.

**Statutory authority for adoption:**

RCW 18.54.070(2)

**Statute being implemented:**

RCW 18.54.070(2)

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION:

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** May 04, 2016

**TIME:** 11:24 AM

**WSR 16-10-118**

**DATE** 05/03/2016

**NAME** (type or print)

Kathy Schmitt

**SIGNATURE**

**TITLE**

Deputy Director, Office of Health Professions and Facilities

**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/Board of Optometry

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Brett Lorentson	111 Israel Road SE, Tumwater WA 98501	360-236-4611
Implementation.... Lorelei Walker	111 Israel Road SE, Tumwater WA 98501	360-236-4947
Enforcement..... Lorelei Walker	111 Israel Road SE, Tumwater WA 98501	360-236-4947

**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 was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Lorelei Walker  
Address: Department of Health  
Veterinary Board of Governors  
PO Box 47852  
Olympia, WA 98504-7852

phone 360-236-4947  
fax 360-236-2901  
e-mail [Lorelei.Walker@doh.wa.gov](mailto:Lorelei.Walker@doh.wa.gov)

No: Please explain:

AMENDATORY SECTION (Amending WSR 91-06-025, filed 2/26/91, effective 3/29/91)

**WAC 246-851-370 Employed doctors of optometry, franchises and equipment use agreements.** ((The salary, bonus or other remuneration of a doctor of optometry who is employed for professional optometric services, shall not be dependent upon the percentage or number of patients who obtain visual examinations or who have prescriptions filled.)) The employed optometrist, acting in the capacity of consultant, advisor or staff doctor of optometry, the optometrist who has acquired a franchise relating to the practice of optometry, and the optometrist who has a professional equipment use agreement/contract, shall at all times remain cognizant of his or her professional responsibilities and with demeanor, decorum and determination retain his or her right of independent professional judgment and title in all situations and circumstances. If at any time the right of independent professional judgment or title is abridged it shall be incumbent upon the optometrist to resign or correct his or her position as consultant, advisor or staff doctor of optometry, or to resign from or correct a franchise and/or equipment use agreement/contract relationship.