



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: September 13, 2019

TIME: 10:45 AM

WSR 19-19-052

**Agency:** Department of Health- Podiatric Medical Board

**Original Notice**

**Supplemental Notice to WSR**

**Continuance of WSR**

**Preproposal Statement of Inquiry was filed as WSR 18-13-025 ; 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).**

**Proposal is exempt under RCW .**

**Title of rule and other identifying information:** (describe subject) WAC 246-922-230 Prohibited transactions. The Podiatric Medical Board (board) is proposing an amendment regarding prohibited transactions by podiatric physicians and surgeons.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
12/5/19	1:00 pm	Department of Health Creekside 2 at Center Point Suite 310, Room 307 20425 72nd Ave South Kent, WA 98032	

**Date of intended adoption:** 12/05/2019 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Susan Gragg  
Address: PO Box 47852  
Olympia, WA 98504-7852  
Email: <https://fortress.wa.gov/doh/policyreview>  
Fax: 360-236-2901  
Other:  
By (date) 11/27/2019

**Assistance for persons with disabilities:**

Contact Susan Gragg  
Phone: 360-236-4941  
Fax:  
TTY: (360) 833-6388 or 711  
Email: [susan.gragg@doh.wa.gov](mailto:susan.gragg@doh.wa.gov)  
Other:  
By (date) 11/27/2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** During recent rule-making, filed as WSR 18-18-052 in August 2018, the board amended WAC 246-922-010. As part of that rulemaking, the language that prohibited podiatric physicians and surgeons from adjusting or modifying prefabricated orthotic devices and selling them to customers as custom fabricated or custom made devices was repealed because the language was not appropriate for a definition. During the rule adoption hearing, the Washington State Podiatric Medical Association (WSPMA) requested the board re-file the CR102 to relocate the language to another section of rule rather than repeal it as this rule provides important protections for patients and set clear practice parameters for podiatric physicians. No changes were made to those rules as a result of this comment because, although the board agreed that the language prohibiting the marketing of

adjusted prefabricated devices as custom devices is important, the scope of the rulemaking did not allow for additional sections of rule to be open. The board did, however, authorize rule-making to address this concern at a later date.

The board is now addressing WSPMA's concerns by proposing to amend WAC 246-922-230 to appropriately include the repealed language in this rule section because it relates to prohibited transactions by podiatric physicians and surgeons. The board determined that this is the most appropriate location for the language.

**Reasons supporting proposal:** The board determined that a rule amendment is needed to reinstate the recently stricken language regarding dispensing and selling prefabricated orthotic devices that have been adjusted or modified as if they were custom fabricated or custom-made orthotic devices. The proposed amendment represent the board's commitment to hold licensees to a high standard of integrity while maintaining patients' trust in the profession.

**Statutory authority for adoption:** RCW 18.22.005, 18.22.015, and 18.130.050

**Statute being implemented:** Chapter 18.22 RCW

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None.

**Name of proponent:** (person or organization) Washington State Podiatric Medical Board

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Susan Gragg	111 Israel Road SE, Tumwater, WA 98501	360-236-4941
Implementation:	Susan Gragg	111 Israel Road SE, Tumwater, WA 98501	360-236-4941
Enforcement:	Susan Gragg	111 Israel Road SE, Tumwater, WA 98501	360-236-4941

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

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

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

Name: Susan Gragg  
Address: PO Box 47852  
Olympia, WA 98504-7852  
Phone: 360-236-4941  
Fax: 360-236-2901

TTY: (360) 833-6388 or 711  
Email: susan.gragg@doh.wa.gov  
Other:

No: Please explain:

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**


If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. The rule amendment does not impose more than minor costs on businesses. The language being added to this rule making had previously been in another section of rule originally adopted in 1999. A recent rule change removed the language from the original definitions section because requirements are inappropriate for a definitions section of rule. The board is now re-inserting the language to the appropriate rule section.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

<b>Date:</b> 09/13/2019	<b>Signature:</b>  
<b>Name:</b> Renee Fullerton	
<b>Title:</b> Executive Director	

AMENDATORY SECTION (Amending WSR 91-10-041, filed 4/25/91, effective 5/26/91)

**WAC 246-922-230 Prohibited transactions.** (1) A podiatric physician and surgeon is prohibited from adjusting or modifying prefabricated orthotic devices and selling them to customers as custom fabricated or custom made devices.

(2) A podiatric physician and surgeon shall not compensate or give anything of value to a representative of the press, radio, television or other communication media in anticipation of or in return for professional publicity of any individual podiatric physician and surgeon in a news item.