



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 20, 2019

TIME: 1:36 PM

WSR 19-20-017

Agency: Department of Health

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 17-20-002 ; 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) Chapter 246-803 WAC East Asian medicine practitioner rules. The department of Health proposes to clarify, streamline, and update regulations for licensed East Asian medicine practitioners in Washington State. The proposed rules amend WAC's 246-803-010, 246-803-030, 246-803-130 and 246-803-300. In addition, the department proposed to create new rules for: patient record content; patient abandonment; instrument sterilization procedure; preparing and maintaining a clean field; and expired license.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
11/8/2019	10:00 a.m.	Department of Health Town Center Three 243 Israel Rd. S.E., Room 224 Tumwater, WA 98501	

Date of intended adoption: 11/20/2019 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Vicki Brown

Address: East Asian medicine practitioner Program
P. O. Box 47852
Olympia, WA 98504-7852

Email: <https://fortress.wa.gov/doh/policyreview>

Fax: 360-236-2901

Other:

By (date) 11/08/2019

Assistance for persons with disabilities:

Contact Vicki Brown

Phone: 360-236-4865

Fax: 360-236-2901

TTY: (360) 833-6388 or 711

Email: vicki.brown@doh.wa.gov

Other:

By (date) 11/01/2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Chapter 246-803 WAC - East Asian medicine practitioner was opened by the Department of Health (department) to clarify, streamline, and update regulations for licensed East Asian medicine practitioners in Washington State. A comprehensive review of the chapter had not been done since 2014, and the existing rules are outdated, conflict with current law and practice. The proposed rule amendments are necessary to provide clear, current, and enforceable regulations for regulating East Asian medicine practitioners.

These proposed changes include: make general housekeeping and clarification changes; add updated and current definitions; and amend the patient notification of qualifications and scope of practice requirements.

In addition, the department is proposing new rules for: patient record content; patient abandonment; instrument sterilization procedure; preparing and maintaining a clean field; and expired license.

Reasons supporting proposal: The department opened the chapter to revise the rules so they are clear, concise, and reflect current East Asian medicine practitioner practices. This revision is part of the five-year rule review process under RCW 43.70.041.

In addition, the department is proposing new rules to reflect current East Asian medicine Practitioner practices including: Patient record content details the clinical information that is required to be included in a patient record, which must be in English and be legible, complete and accurate; Patient abandonment establishes the requirement than an East Asian medicine practitioner shall respond to any reasonable request for services in the interest of public health and welfare; Instrument sterilization procedure requires East Asian medicine practitioners to follow the 7th edition of "Best Practices for Acupuncture Needles Safety and Related Procedures" published by the Council of Colleges for Acupuncture and Oriental Medicine revised May 2017; Preparing and maintaining a clean field for each patient. A clean field is the area that has been prepared to contain the equipment necessary for acupuncture in such a way as to reduce the possible contamination of sterile needles and other clean or sterile equipment; and Expired license rule defines how an East Asian medicine practitioner with an expired license may return his or her license to an active license.

Statutory authority for adoption: RCW 18.06.160

Statute being implemented: Chapter 18.06 RCW

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes 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) Department of Health, East Asian medicine practitioner program Private Public Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Vicki Brown	111 Israel Rd. S.E., Tumwater, WA 98501	360-236-4865
Implementation:	Vicki Brown	111 Israel Rd. S.E., Tumwater, WA 98501	360-236-4865
Enforcement:	Vicki Brown	111 Israel Rd. S.E., Tumwater, WA 98501	360-236-4865

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:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: The proposed rules don't impose costs of businesses. The proposed rules amend and create new licensure regulations for licensure as an East Asian medicine practitioner.

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 proposed rules don't impose costs of businesses. The proposed rules amend and create new licensure regulations for licensure as an East Asian medicine practitioner.

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:

Date: 09/19/2019	Signature: 
Name: John Wiesman, DrPH, MPH	
Title: Secretary of Health	

WAC 246-803-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Accredited school, college or program" (~~(is)~~) means:

(a) Accredited or has candidacy status as a United States postsecondary school, college or program; or

(b) Accredited by or has candidacy status with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

(2) "Acupuncture needles" means solid filiform instruments intended to pierce the skin in the practice of acupuncture. Acupuncture needles used on a patient must be sterile and disposable, and may only be used once.

(3) "Approved school" (~~(is)~~) means a school, college or program approved by the secretary of the department of health that meets the requirements of WAC 246-803-500.

~~((3))~~ (4) "Credit" means ten classroom contact hours on the quarter system or fifteen classroom contact hours on the semester or trimester system.

~~((4))~~ (5) "Department" means the department of health.

~~((5))~~ (6) "East Asian medicine apprenticeship" (~~(is)~~) means training in East Asian medicine administered by an apprenticeship trainer that satisfies the educational requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230. An apprenticeship is of limited duration and ends at the time the parties to the apprenticeship agreement have completed their obligations.

~~((6))~~ (7) "East Asian medicine practitioner" is a person licensed under chapter 18.06 RCW.

~~((7))~~ (8) "East Asian medicine program" (~~(is)~~) means training in East Asian medicine offered by an academic institution that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230 and also offers training in other areas of study. A program is an established area of study offered on a continuing basis. An East Asian medicine program may be referred to as a program in acupuncture, acupuncture and Oriental medicine, or Oriental medicine.

~~((8))~~ (9) "East Asian medicine school" (~~(is)~~) means an accredited academic institution which has the sole purpose of offering training in East Asian medicine that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230.

~~((9))~~ (10) "East Asian medicine tutorial instruction" (~~(is)~~) means training in East Asian medicine which is offered by an academic institution or qualified instructor on the basis of a tutorial agreement between the school or instructor and the student and satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230. A tutorial is of limited duration and ends at the time the parties to the tutorial agreement have performed their obligations under the agreement.

~~((10))~~ (11) "Hypodermic needle" means a device intended to inject fluids into, or withdraw fluids from, parts of the body below the surface of the skin.

(12) "Primary health care provider" (~~(is)~~) means an individual licensed under:

(a) Chapter 18.36A RCW, Naturopathy;

- (b) Chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery;
- (c) Chapter 18.57A RCW, Osteopathic physicians' assistants;
- (d) Chapter 18.71 RCW, Physicians;
- (e) Chapter 18.71A RCW, Physician assistants; or
- (f) RCW 18.79.050, "Advanced registered nursing practice" defined—Exceptions.

AMENDATORY SECTION (Amending WSR 17-15-006, filed 7/5/17, effective 7/5/17)

WAC 246-803-030 East Asian medicine. East Asian medicine is a health care service using East Asian medicine diagnosis and treatment to promote health and treat organic or functional disorders. East Asian medicine includes the following:

- (1) Acupuncture(~~(. Acupuncture)~~), includes the use of acupuncture needles or lancets to directly or indirectly stimulate acupuncture points and meridians;
- (2) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;
- (3) Moxibustion;
- (4) Acupressure;
- (5) Cupping;
- (6) Dermal friction technique;
- (7) Infrared;
- (8) Sonopuncture;
- (9) Laserpuncture;
- (10) Point injection therapy (aquapuncture):
 - (a) Is defined as meaning the subcutaneous, intramuscular and intradermal injection of substances consistent with the practice of East Asian medicine to stimulate acupuncture points, (~~(AHSI)~~) ashi points, trigger points and meridians. Substances are limited to:
 - (i) Saline;
 - (ii) Sterile water;
 - (iii) Herbs specifically manufactured for injection by means of hypodermic needles;
 - (iv) Minerals specifically manufactured for injection by means of hypodermic needles;
 - (v) Vitamins in liquid form specifically manufactured for injection by means of hypodermic needles; and
 - (vi) Homeopathic and nutritional substances specifically manufactured for injection by means of hypodermic needles.
 - (b) For the purposes of this section, includes trigger points as a subset of acupuncture points and (~~(AHSI)~~) ashi points as recognized in the current practice of East Asian medicine.
 - (c) Does not include injection of controlled substances contained in Schedules I through V of the Uniform Controlled Substances Act, chapter 69.50 RCW or steroids as defined in RCW 69.41.300.
- (11) Dietary advice and health education based on East Asian medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements.

Health education. Health education is educational information directed to the patient that attempts to improve, maintain, promote and

safeguard the health care of the patient. Health education consists of educating the patient on how the mind, body and spirit connect in context of imbalances, emotional patterns and tendencies as defined by and treated in East Asian medicine. Health education does not include mental health counseling;

(12) Breathing, relaxation, and East Asian exercise techniques;

(13) Qi gong;

(14) East Asian massage. East Asian massage means manual techniques having originated in East Asia involving the manipulation of the soft tissues of the body for therapeutic purposes.

(a) East Asian massage consists of:

(i) Applying fixed or movable pressure;

(ii) Passive, resistive, and assisted stretching of fascial and connective tissue;

(iii) Holding or causing movement of the body; or

(iv) Tapping, compressions or friction.

(b) East Asian massage may be performed with the use of tools common to the practice and aids of superficial heat, cold, water, lubricants, salts, minerals, liniments, poultices, and herbs.

(c) East Asian massage does not include attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force.

(15) Tui na. Tui na is a method of East Asian bodywork, characterized by the kneading, pressing, rolling, shaking, and stretching of the body and does not include spinal manipulation; and

(16) Superficial heat and cold therapies.

AMENDATORY SECTION (Amending WSR 16-01-158, filed 12/21/15, effective 1/21/16)

WAC 246-803-130 Application requirements for applicants from foreign schools. (1) An applicant for an East Asian medicine practitioner license who has graduated from a foreign East Asian medicine practitioner program not accredited, or approved by the secretary must:

(a) Have at least a bachelor's or master's degree in East Asian medicine or acupuncture from an institution of higher learning which is approved by the foreign country's ministry of education/health, or other governmental entity;

(b) Have graduated from a program of East Asian medicine or acupuncture education with requirements substantially equal to those required of graduates of secretary-approved programs; and

(c) Demonstrate fluency in reading, speaking, and understanding the English language by taking the examinations required in WAC 246-803-240 (2)(a) through (c) in English or by passage of the test of English as a foreign language in WAC 246-803-240(3).

(2) An applicant for an East Asian medicine practitioner license must submit to the department:

(a) A completed application.

(b) The application fee required under WAC 246-803-990.

(c) Original copy of school transcripts from the East Asian medicine or acupuncture program showing degree and degree date.

(d) A credentialing evaluation report from the (~~American Association of Collegiate Registrars and Admissions Officers (AACRAO)~~). The

~~report must be sent directly from the AACRAO to the department. Submit transcripts, fees, and other documentation to a credentialing service approved by the department and request the evaluation report be sent directly to the department. The department recognizes the AACRAO for credential evaluations))~~ International Consultants of Delaware (ICD).

(e) Verification of clinical training as required in WAC 246-803-230.

(f) Verification of successful completion of the examinations as required in WAC 246-803-240.

(g) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. ~~The ((certification))~~ verification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.

(h) Verification of completion of seven clock hours of AIDS education as required in chapter 246-812 WAC, Part 8.

(i) Verification of current cardiopulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.

(j) Any additional documents requested by the secretary.

(3) The department recognizes the ICD for credential evaluations. The applicant shall request that the ICD send their evaluation directly to the department. To obtain a credentialing evaluation report, the applicant shall submit to the ICD:

(a) Transcripts;

(b) Appropriate fees; and

(c) Other requested documentation.

AMENDATORY SECTION (Amending WSR 11-17-105, filed 8/22/11, effective 9/22/11)

WAC 246-803-300 Patient notification of qualifications and scope of practice. East Asian medicine practitioners in the state of Washington ~~((must))~~ shall provide to each patient prior to or at the time of the initial patient visit the qualifications and scope of practice form. The form must include:

(1) The East Asian medicine practitioner's education. The degree obtained or if the education was by apprenticeship, the dates and locations of the didactic and clinical training.

(2) License information, including state license number and date of licensure.

(3) A statement that the practice of East Asian medicine in the state of Washington includes the following:

(a) Acupuncture, including the use of acupuncture needles or lancets to directly and indirectly stimulate acupuncture points and meridians;

(b) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;

(c) Moxibustion;

(d) Acupressure;

(e) Cupping;

(f) Dermal friction technique;

- (g) Infrared;
- (h) Sonopuncture;
- (i) Laserpuncture;

(j) Point injection therapy (aquapuncture)(*) is defined as meaning the subcutaneous, intramuscular and intradermal injection of substances consistent with the practice of East Asian medicine to stimulate acupuncture points, ashi points, trigger points and meridians.

(i) For the purposes of this section, point injection therapy includes trigger points as a subset of acupuncture points and ashi points as recognized in the current practice of East Asian medicine.

(ii) Does not include injection of controlled substances contained in Scheduled I through V of the Uniform Controlled Substance Act, chapter 69.50 RCW or steroids as defined in RCW 69.41.300.

(iii) Substances are limited to:

(A) Saline;

(B) Sterile water;

(C) Herbs specifically manufactured for injection by means of hypodermic needles;

(D) Minerals specifically manufactured for injection by means of hypodermic needles;

(E) Vitamins in liquid form specifically manufactured for injection by means of hypodermic needles; and

(F) Homeopathic and nutritional substances specifically manufactured for injection by means of hypodermic needles.

(k) Dietary advice and health education based on East Asian medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements;

(l) Breathing, relaxation, and East Asian exercise techniques;

(m) Qi gong;

(n) East Asian massage and Tui na (which is a method of East Asian bodywork); and

(o) Superficial heat and cold therapies.

(4) A statement that side effects of the treatments listed above may include, but are not limited to, the following:

(a) Pain following treatment;

(b) Minor bruising;

(c) Infection;

(d) Needle sickness; and

(e) Broken needle.

(5) A statement that patients must inform the East Asian medicine practitioner if they have a severe bleeding disorder or pacemaker prior to any treatment.

NEW SECTION

WAC 246-803-305 Patient record content. (1) A licensed East Asian medicine practitioner shall:

(a) Make a complete, legible, and accurate record of each patient to whom an East Asian medicine treatment is given. The East Asian medicine practitioner shall ensure that a patient record is in English and includes:

(i) Name of the patient;

(ii) Patient history;

- (iii) Dates of treatment;
- (iv) Treatment given; and
- (v) Progress made during treatment.

(b) Maintain a patient record for six years after the last treatment of the patient.

(c) Maintain a patient record for at least six years after the patient reaches eighteen years of age.

(2) A licensed East Asian medicine practitioner shall comply with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act, 45 C.F.R. destruction and privacy regulations.

(3) For the purposes of this section "patient records" means all records maintained by a practitioner that includes all information related to the patient.

NEW SECTION

WAC 246-803-308 Patient abandonment. (1) An East Asian medicine practitioner may accept or reject a patient, but shall respond to any reasonable request for services in the interest of public health and welfare.

(2) The attending East Asian medicine practitioner, without reasonable cause, shall not neglect, ignore, abandon, or refuse to treat a patient. If the East Asian medicine practitioner chooses to withdraw responsibility for a patient of record, the East Asian medicine practitioner shall:

(a) Advise the patient in writing that treatment is being terminated and that another East Asian medicine practitioner should be sought for future care; and

(b) Advise the patient that the East Asian medicine practitioner shall remain reasonably available for up to fifteen calendar days from the date of such notice to address clinical concerns related to the care provided.

NEW SECTION

WAC 246-803-320 Instrument sterilization procedure. (1) An East Asian medicine practitioner shall use sterile instruments and follow proper instrument sterilization procedures and the keeping of accurate records of sterilization cycles and equipment service maintenance as described in the manufacturer's instruction manual and the 7th edition of "*Best Practices for Acupuncture Needle Safety and Related Procedures*" published by the Council of Colleges of Acupuncture and Oriental Medicine revised May 2017. This shall not apply to needles, which may not be reused or sterilized for a subsequent use on more than one patient under any circumstances.

(2) "Sterilization" means to kill all microbial life, including bacterial spores, for instruments which enter tissues. Sterilization is accomplished by subjecting clean items to steam pressure (autoclaving), ultraviolet-C, or to dry heat.

NEW SECTION

WAC 246-803-325 Preparing and maintaining a clean field. (1) A clean field is the area that has been prepared to contain the equipment necessary for acupuncture in such a way as to reduce the possible contamination of sterile needles and other clean or sterile equipment.

(2) An East Asian medicine practitioner must prepare and maintain a clean field for each patient.

NEW SECTION

WAC 246-803-410 Expired license. An East Asian medicine practitioner with an expired license may return his or her license to an active license. During the time the license is expired, an East Asian medicine practitioner cannot practice in Washington state.

(1) If an East Asian medicine practitioner's license has expired for one year or less, the East Asian medicine practitioner may return to active status by meeting the requirements of WAC 246-12-040 (3) (a) (i) through (v) and 246-803-990.

(2) If an East Asian medicine practitioner's license has expired for more than one year but less than three, the East Asian medicine practitioner may return to active status by meeting the requirements of WAC 246-12-040 (3) (b) (i) through (ix) and 246-803-990.

(3) If an East Asian medicine practitioner's license has expired for three years or more at the time of application and they have been engaged in practice in another state or United States jurisdiction, the East Asian medicine practitioner may return to active status by submitting proof to the department of:

(a) Verification of active practice from any other state or United States jurisdiction. For this purpose "active practice" means a minimum of five hundred sixty hours of practice in the preceding twenty-four months; and

(b) Having met the requirements of WAC 246-12-040 (3) (c) (i) through (xi) and 246-803-990.

(4) If an East Asian medicine practitioner's license has expired for three years or more at the time of application and they have not been engaged in practice in another state or United States jurisdiction, the East Asian medicine practitioner may return to active status by submitting proof to the department of:

(a) Having met the requirements of subsection (2) of this section; and

(b) In addition to these requirements, the practitioner has the choice of:

(i) Completion of extended course work preapproved by the department; or

(ii) Successfully retaking and passing the examinations as required in WAC 246-803-240.