



# PROPOSED RULE MAKING

**CR-102 (June 2024)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: February 04, 2026

TIME: 10:11 AM

WSR 26-04-130

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

**Original Notice**

**Supplemental Notice to WSR**

**Continuance of WSR**

**Preproposal Statement of Inquiry was filed as WSR 24-11-104 ; 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); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) Office-Based Surgery Rules for Allopathic Physicians (MD) - Use of nitrous oxide. The Washington Medical Commission is proposing a new section WAC 246-919-603, Use of nitrous oxide in office-based settings, and proposing changes to WAC 246-919-601, Safe and effective analgesia and anesthesia administration in office-based surgical settings.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
March 13, 2026	9:30 a.m.	<b>Virtually:</b> Register for this virtual meeting to be held via Teams: <a href="https://tinyurl.com/da8md4yt">https://tinyurl.com/da8md4yt</a>  <b>In person:</b> Department of Labor & Industries 7273 Linderson Way SW Tumwater, WA 98501	The public hearing will be hybrid. Participants can attend at the physical location or virtually.  To join the WMC's Rules interested parties email list, please visit: <a href="https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153">https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153</a>

**Date of intended adoption:** March 13, 2026 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name Amelia Boyd, Program Manager  
Address PO Box 47866, Olympia, WA 98504-7866  
Email [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov)  
Fax NA  
Other <https://fortress.wa.gov/doh/policyreview/>

Beginning (date and time) The date and time of this filing  
By (date and time) March 6, 2026 at 11:59 p.m.

**Assistance for persons with disabilities:**

Contact: Amelia Boyd, Program Manager  
Phone: 800-525-0127  
Fax: N/A  
TTY: 711  
Email: [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov)

Other  
By (date) March 6, 2026

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Washington Medical Commission (commission) is proposing amendments to WAC 246-919-601 and creating a new section, WAC 246-919-603, to establish the use of nitrous oxide by allopathic physicians in in office based surgical settings.

The proposal clarifies the regulatory status of nitrous oxide in office based settings and establishes safety standards for its use. WAC 246-919-601 does not specify whether nitrous oxide qualifies as minimal sedation, the new section, WAC 246-919-603, addresses this gap by outlining conditions for exemption. It promotes patient safety through physician training, the presence of a basic life support (BLS) certified provider, patient monitoring, emergency protocols, and special precautions for pediatric patients. By defining safe use conditions, the rule provides regulatory clarity while allowing controlled use of nitrous

oxide by allopathic physicians in office-based settings with minimal risk. WAC 246-919-601 is being amended to reference the new section, WAC 246-919-603.

A formal rules hearing was held on August 22, 2025, under the previously filed CR-102, WSR #25-14-080. The draft language presented at the hearing was not adopted after public testimony and Commissioner feedback indicated that additional revisions were needed. Additional interested parties work was completed. This proposed language narrows the scope of the rule by expressly exempting facilities that hold accreditation or certification under WAC 246-919-601(5)(a), whereas the earlier version applied to all office-based settings. It also adds clarity by specifying that the health care practitioner administering nitrous oxide must be trained, competent, and acting within their scope of practice. Pediatric safeguards are expanded by requiring parent or guardian discussions not only based on patient age and airway abnormalities, but also for pediatric patients with significant comorbidities, reflecting a broader consideration of patient-specific risk factors.

In contrast to the earlier version, which required the use of a scavenging system in all cases, this version continues to emphasize staff safety while allowing additional methods, including demand-flow delivery systems or dosimeter monitoring, to demonstrate that exposure levels remain within safe limits. Finally, the proposed language improves regulatory clarity by defining demand-flow delivery and better aligning the rule with existing office-based surgery requirements.

**Reasons supporting proposal:** This proposal provides regulatory clarity by explicitly defining nitrous oxide's status as minimal sedation, ensuring consistent application of rules. It enhances patient safety through physician training, patient monitoring, emergency protocols, and safeguards like scavenging systems and secure storage. Aligning with medical best practices, it allows controlled use of nitrous oxide, a widely accepted, low-risk sedation option. Clear guidelines improve access to safe, office-based sedation while minimizing risks, particularly for pediatric patients.

**Statutory authority for adoption:** RCW 18.71.017 and 18.130.050

**Statute being implemented:** RCW 18.71.017

**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 Medical Commission

**Type of proponent:**  Private.  Public.  Governmental.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Amelia Boyd	111 Israel Rd SE, Tumwater, WA 98501	360-918-6336
Implementation	Kyle Karinen	111 Israel Rd SE, Tumwater, WA 98501	360-236-4810
Enforcement	Kyle Karinen	111 Israel Rd SE, Tumwater, WA 98501	360-236-4810

**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 Amelia Boyd, Program Manager  
Address PO Box 47866, Olympia, WA 98504-7866

Phone 360-918-6336  
Fax NA  
TTY 711  
Email [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov)  
Other

No: Please explain:

### Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

#### (1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:

- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(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 19.85.025\(4\)](#). (Does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule: Although many licensees practice within small businesses, the proposed rules regulate only individual professional standards and do not impose requirements on business operations, staffing, equipment, or reporting.

#### (2) Scope of exemptions: *Check one.*

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

#### (3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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:** February 4, 2026

**Name:** Micah T. Matthews

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

**Signature:**

*Micah T. Matthews*

**WAC 246-919-601 Safe and effective analgesia and anesthesia administration in office-based surgical settings.** (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The commission establishes the following rule for physicians licensed under this chapter who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The following terms used in this subsection apply throughout this section unless the context clearly indicates otherwise:

(a) "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(b) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway, and cardiovascular function may be impaired. Sedation that unintentionally progresses to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(c) "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures, including procedures such as retrobulbar or periorbital ocular blocks only when performed by a board eligible or board certified ophthalmologist. It does not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle where significant cardiovascular or respiratory complications may result.

(d) "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

(e) "Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to oral, intranasal, or intramuscular medications.

(f) "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(g) "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction, performed in a location other than a hospital or hospital-associated surgical center li-

censed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves. Infiltration around peripheral nerves does not include infiltration of local anesthetic agents in an amount that exceeds the manufacturer's published recommendations.

(b) Using nitrous oxide under the requirements in WAC 246-919-603.

(c) Performing surgery in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

~~((e))~~ (d) Performing surgery utilizing or administering general anesthesia. Facilities in which physicians administer general anesthesia or perform procedures in which general anesthesia is a planned event are regulated by rules related to hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, an ambulatory surgical facility licensed under chapter 70.230 RCW, or a dental office under WAC 246-919-602.

~~((d))~~ (e) Administering deep sedation or general anesthesia to a patient in a dental office under WAC 246-919-602.

~~((e))~~ (f) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.71 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of their specialty.

(4) Application of rule.

This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification.

(a) A physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from an accrediting entity approved by the commission.

(b) The commission may approve an accrediting entity that demonstrates to the satisfaction of the commission that it has all of the following:

(i) Standards pertaining to patient care, recordkeeping, equipment, personnel, facilities and other related matters that are in accordance with acceptable and prevailing standards of care as determined by the commission;

(ii) Processes that assure a fair and timely review and decision on any applications for accreditation or renewals thereof;

(iii) Processes that assure a fair and timely review and resolution of any complaints received concerning accredited or certified facilities; and

(iv) Resources sufficient to allow the accrediting entity to fulfill its duties in a timely manner.

(c) A physician may perform procedures under this rule in a facility that is not accredited or certified, provided that the facility has submitted an application for accreditation by a commission-approved accrediting entity, and that the facility is appropriately equipped and maintained to ensure patient safety such that the facility meets the accreditation standards. If the facility is not accredited or certified within one year of the physician's performance of the first procedure under this rule, the physician must cease performing procedures under this rule until the facility is accredited or certified.

(d) If a facility loses its accreditation or certification and is no longer accredited or certified by at least one commission-approved entity, the physician shall immediately cease performing procedures under this rule in that facility.

(6) Competency. When an anesthesiologist or certified registered nurse anesthetist is not present, the physician performing office-based surgery and using a form of sedation defined in subsection (4) of this section must be competent and qualified both to perform the operative procedure and to oversee the administration of intravenous sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation;

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group must be present or immediately available with age-size-appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility. Certification in advanced resuscitative techniques includes, but is not limited to, advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or advanced pediatric life support (APLS).

(9) Sedation assessment and management.

Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

(a) If an anesthesiologist or certified registered nurse anesthetist is not present, a physician intending to produce a given level of sedation should be able to "rescue" a patient who enters a deeper level of sedation than intended.

(b) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the patient is breathing, and that oxygenation, heart rate and blood pressure are within acceptable values. A physician who returns a patient to a lighter level of sedation in accordance with this subsection (c) does not violate subsection (10) of this section.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not administer the intravenous sedation, or monitor the patient.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive, and accurate medical record for each patient.

(a) The medical record must include all of the following:

(i) Identity of the patient;

(ii) History and physical, diagnosis and plan;

(iii) Appropriate lab, X-ray or other diagnostic reports;

(iv) Appropriate preanesthesia evaluation;

(v) Narrative description of procedure;

(vi) Pathology reports, if relevant;

(vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;

(viii) Provision for continuity of postoperative care; and

(ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

(i) The type of sedation or anesthesia used;

(ii) Name, dose, and time of administration of drugs;

(iii) Documentation at regular intervals of information obtained from the intraoperative and postoperative monitoring;

(iv) Fluids administered during the procedure;

(v) Patient weight;

(vi) Level of consciousness;

(vii) Estimated blood loss;

(viii) Duration of procedure; and

(ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

#### NEW SECTION

#### **WAC 246-919-603 Use of nitrous oxide in office-based settings.**

(1) The purpose of this rule is to promote and establish consistent standards, continuing competency, and promote patient safety. The com-

mission establishes the following rule for physicians licensed under this chapter who perform surgical procedures and use nitrous oxide in office-based settings. This section does not apply to facilities that hold accreditation or certification from an accrediting organization approved under WAC 246-919-601 (5) (a).

(2) The use of nitrous oxide is exempt from WAC 246-919-601 but is subject to the requirements of this section if the following conditions are met:

(a) Nitrous oxide is administered at a concentration of 50 percent or less;

(b) Nitrous oxide is used without another inhaled anesthetic, sedative, or opioid drug; and

(c) The following safeguards are in place:

(i) The physician performing the procedure must demonstrate competence by completing a continuing medical education course in nitrous oxide administration;

(ii) At least one healthcare practitioner must be present who is certified in basic life support (BLS);

(iii) The physician must be capable of resuscitating a patient from deeper sedation levels and ensure the patient's vital signs are monitored;

(iv) The physician performing the procedure must not administer nitrous oxide or monitor the patient;

(v) The health care practitioner administering the nitrous oxide must be different from the physician performing the procedure. The health care practitioner administering the nitrous oxide must be trained and competent in nitrous oxide administration and patient monitoring and acting within their scope of practice;

(vi) The physician performing a procedure under this rule must ensure that the facility maintains a documented plan for transferring patients to a hospital in the event of complications, including arrangements for emergency medical services and appropriate escort of the patient to the hospital;

(vii) The physician must maintain legible, complete, comprehensive, and accurate medical records including the following:

(A) Identity of the patient;

(B) History and physical, diagnosis and plan;

(C) Appropriate lab, X-ray, or other diagnostic reports;

(D) Documentation of nitrous oxide administered or dispensed; and

(E) Documentation of vital signs during the nitrous oxide sedation, including respiratory rate, oxygen saturation, heart rate, and blood pressure;

(viii) The following equipment must be available and include:

(A) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(B) Portable oxygen delivery system including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivery positive pressure, oxygen enriched ventilation to the patient;

(C) Blood pressure cuff or sphygmomanometer of appropriate size; and

(D) Pulse oximeter;

(ix) Nitrous oxide must not be administered to any patient under three years of age. For pediatric patients older than three years, a discussion with the parent or guardian is required to address the specific risks associated with nitrous oxide use in cases where the pa-

tient is younger than six years old, has airway abnormalities, or has significant comorbidities.

This discussion must include reasoning why the pediatric patient can safely receive nitrous oxide in an outpatient environment and any alternatives.

(x) Excess nitrous oxide must be removed from the procedure room to protect staff via a scavenging system:

(A) Except when nitrous oxide is delivered solely through demand-flow equipment. "Demand-flow delivery" means a nitrous oxide system in which gas is released only upon patient inhalation; or

(B) Except when a facility monitors nitrous oxide exposure with dosimeters and can demonstrate that staff exposure remains within safe limits;

(xi) Equipment used for monitoring patients must be calibrated or performance verified according to manufacturer's instructions; and

(xii) Nitrous oxide must be stored securely and accessible only by authorized individuals.

(3) The physician shall assess patient responsiveness using pre-operative values as normal guidelines and discharge the patient only when the following criteria are met, except when their prior baseline is below the noted criteria:

(a) Vital signs including blood pressure, pulse rate, and respiratory rate are stable. Vital signs are not required when a pediatric patient is uncooperative or the emotional condition is such that obtaining vital signs is not possible;

(b) The patient is alert and oriented to person, place, and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning as appropriate to age and preoperative psychological status;

(d) The patient can sit up unassisted;

(e) The patient can walk with minimal assistance;

(f) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.