

Significant Legislative Rule Analysis
WAC 246-817-305 Record content
WAC 246-817-310 Patient record retention and accessibility
requirements
WAC 246-817-315 Business records accessibility
September 30, 2014

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The Dental Quality Assurance Commission (commission) is proposing rules addressing three fundamental elements of dental patient and business records: content, retention time, and accessibility. Currently, WAC 246-817-310, Maintenance and Retention of Records, contains minimal guidance on content and sets a five-year retention period. The proposed rule would create two new sections, WAC 246-817-305 and 246-817-315, and would amend WAC 246-817-310 to move business record requirements and more thoroughly detail the information that must be included in patient records. It would also extend the length of time patient records must be retained, from five years for all patients to six years for adult patients, and six years after a minor patient reaches age 18. Additionally, existing language from WAC 246-817-310 has been modified and moved to WAC 246-817-315 to separate business record accessibility from patient record accessibility.

The current proposal is different from the previous CR102 filed as WSR # 14-04-022 on January 27, 2014. The original proposal deleted language in WAC 246-817-310 regarding ownership and lessee information of dental equipment and dental offices. Stakeholder comments received at the April 18, 2014 hearing recommended the commission keep these requirements. The commission agreed with the recommendation but decided the requirement should be listed in a separate rule. The current proposal modified and moved the rule language to WAC 246-817-315.

Is a Significant Analysis required for this rule?

Yes, as defined in RCW 34.05.328 the proposed rule requires a significant analysis.

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The general goal of chapter 70.02 RCW is to ensure the people of this state have complete, legible, and accurate patient records. Additionally, RCW 18.32.655 allows the commission to adopt reasonable rules related to dental records.

The proposed rules support and implement this authority by setting clear requirements for:

1. Complete and accurate patient records;
2. Patient record maintenance;
3. Patient record accessibility;
4. Patient record retention; and
5. Business record accessibility.

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The commission has identified the need to provide clarity in what should be contained in the records. A complete and accurate patient record is vital for patient safety and for appropriate regulation.

Maintaining accurate and complete patient treatment records is not just a matter of paperwork or an accounting or billing function. The patient record is the only contemporaneous documentation of what the dentist saw clinically, what the treatment plan proposed was, what discussion occurred with the patient about treatment alternatives and consent, and what treatment was actually performed. Thorough records are necessary to inform the work of other treatment providers who subsequently treat the patient, as well as for the commission when investigating complaints and regulating practitioners. Maintaining a patient record for six years provides consistency with other nationally recognized guidance documents and record retention schedules.

Requirements for record contents are not currently provided in law. Rules are necessary to clarify the current requirements and ensure that content in dental records is complete and consistent. The commission has determined that there are no feasible alternatives to rulemaking because in order to be enforceable, patient record standards must be in rule. If the proposed rules are not adopted, the commission will be hampered in its ability to clearly identify dental treatment errors.

For rule clarity, existing language from WAC 246-817-310 has been modified and moved to WAC 246-817-315 to separate business record accessibility from patient record accessibility.

The commission held a hearing on an earlier version of the rules on April 18, 2014. The commission did not adopt the then-proposed rules due to stakeholder comment received at the hearing. Stakeholder comments received at the April 18, 2014 hearing recommended the commission keep these requirements. The commission agreed with the recommendation but decided the requirement should be listed in a separate rule. The current proposal modified and moved the rule language to WAC 246-817-315.

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

The proposed rules would create two new sections and amend an existing section of the WAC. By definition, the requirements in these rules are considered “legislatively significant.” (RCW 34.05.328) The following is a cost/benefit analysis of each rule:

Rule Overview – WAC 246-817-305 Record content

The proposed rule details patient and treatment information required to be included in a patient record.

The patient records must be legible, complete, and accurate.

Currently WAC 246-817-310 requires a dentist maintain complete treatment records for patients treated, and records shall include:

- X-rays;
- Treatment plans;
- Patient charts;
- Patient history;
- Correspondence; and
- Financial data and billing.

These requirements are moved to the new section of rule, WAC 246-817-305.

The additional items listed in the proposed rule WAC 246-817-305 further clarify specific patient information necessary to maintain a complete patient record, which must include:

- Documented verification or signature of each entry by the responsible dentist or dental hygienist.
- The date of each patient record entry, document, radiograph or model.
- Up-to-date treatment plan.
- The physical examination findings documented by subjective complaints, objective findings, and an assessment or diagnosis of the patients conditions.
- Up-to-date dental and medical history that may affect dental treatment.
- Any diagnostic aid including images, radiographs, and recommended tests and test results.
- A copy of each laboratory referral as required in RCW 18.32.655.
- A completion description of all treatment/procedures administered at each visit.
- An accurate record of any medications administered, prescribed or dispensed including the date, name of patient, name of medication, and the dosage including refills.
- Any referrals from and to any health care provider.
- Notation of communication to or from patients or patients’ guardians that includes:
 - Potential risks and benefits of proposed treatments and alternatives to treatment;
 - Post-treatment instructions;

- Patient complaints and resolutions; and
- Termination of doctor-patient relationship.

Rule Cost/Benefit Analysis

The benefit of the proposed rule is enhanced patient safety. Thorough, complete, legible, and accurate patient records are vital for patient safety and for appropriate regulation. Requirements for record content are currently not provided in law. Thorough records are necessary to inform the work of other treatment providers who subsequently treat the patient, as well as for the commission when investigating complaints and regulating practitioners. Changes, corrections, or deletions to any written or electronic record should be noted properly. The proposed rule is similar to the standards recommended by the American Dental Association and the American Academy of Pediatric Dentistry.

There is no additional expected cost for dentists to comply with this proposed rule. Most dentists currently chart the items listed in the proposed rule. Three dentists were polled and indicated that a dentist currently spends approximately eight minutes per patient on charting. The United States Department of Labor Bureau of Labor Statistics listed a dentist's average hourly wage as \$78.48. This equates to an existing task cost of approximately \$10.50 per patient. The poll also indicated that complying with the proposed rule would incur no additional time.

Rule Overview - WAC 246-817-310 Patient record retention and accessibility requirements

The proposed rule increases by one year the length of time a dentist must maintain patient records. The proposed rule distinguishes between minor and adult records and adds retention time for minors' records. Modifications also reference appropriate statutes associated with accessibility, privacy, and destruction of records and deletes unnecessary rule language unrelated to record retention. Rule language was deleted and rewritten into the proposed new WAC 246-817-305, where appropriate. Unnecessary and outdated rule language was deleted regarding dental office and equipment ownership and office hours.

Rule Cost/Benefit Analysis

The proposed rule requires records for patients eighteen years and older to be kept for six years from the date of last treatment. The commission analyzed other record retention requirements. For example, the Washington State Medical Quality Assurance Commission (MQAC) guideline requires that medical records be kept for 10 years. The Washington State Health Care Authority (WAC 182-502-0020) requires that records be kept for six years. The commission concluded that six years was an adequate amount of time to retain dental records.

The proposed rule requires records for patients under the age of eighteen years old to be kept for six years after the patient reaches eighteen years old. Children's health status changes rapidly during growth and patient records are essential in providing continuous care. The

commission researched other nationally recognized guidance documents and record retention schedules, and discovered:

- *The American Dental Association's Dental Records* guidance document does not recommend a retention period, but recognizes records for minors should have a retention period through age of majority (18 years old).
- *The American Academy of Pediatric Dentistry's Guideline of Record Keeping* does not recommend a retention period and refers to state law.
- MQAC guidelines require records kept for minors until age 21.

The proposed rule incorporates requirements from chapter 70.02 RCW and states that a dentist must respond to written requests for patient records. This modification restates RCW 70.02.080 in part. This topic is a common question from dentists and patients. The commission determined it is beneficial to have the requirement listed in this rule modification: restating RCW 70.02.080 assures dentists have knowledge of the statutory requirement.

The proposed rule states that the destruction of records must be in compliance with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act. Likewise, this is a common question from dentists and patients where the commission determined it is beneficial to include it in the rule modification to assure dentists have knowledge of the statutory requirement.

A dentist may incur minimal cost increases associated with maintaining patient records for a longer period of time. A poll of three dentists indicated that the cost of storing patient records for one additional year is minimal. Additionally, the minimal cost will be different for paper versus electronic records. The benefit is that licensed dentists may consistently expect standardized, complete information to be available in treatment records.

Rule Overview – WAC 246-817-315 Business records accessibility

The proposed rule moves and modifies existing language from WAC 246-817-310 to a new section WAC 246-817-315 to separate business record accessibility from patient record accessibility. The proposed rule simplifies the rule language and separates subject matter content for clarity.

Rule Cost/Benefit Analysis

There are minimal costs for individuals to maintain a business record. There is no additional expected cost for dentists to comply with this proposed rule.

Cost Benefit Summary

There are minimal costs for individuals to maintain a patient record. A patient record is the only contemporaneous documentation of what the dentist saw clinically, what the treatment

plan proposed was, what discussion was had with the patient about treatment alternatives and consent, and what treatment was actually performed. A small informal survey was conducted of three dentists in three different practice settings; oral and maxillofacial surgeon, a community clinic, and single private practice. All three dentists indicated there would be minimal impact (cost and time) on their practice to comply with the proposed rule. The record is necessary for other treatment providers who will treat the patient in the future as well as for the commission when investigating complaints and regulating practitioners. A complete and accurate patient record is vital for patient safety and for appropriate regulation.

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.

WAC 246-817-305 Record Content

Descriptions of alternatives considered

The commission considered, as an alternative, including the statement "...that meet the generally accepted standard of care for each patient." This proposed language was removed because standard of care is an objective measurement based on individual patient care.

Another alternative considered had listed requirements in a different order. The requirements were reordered to flow appropriately with patient care.

Least burdensome determination

The proposed rule is the least burdensome option as it provides a concise, chronological, and clear list of minimum content required in a patient record.

WAC 246-817-310 Patient record retention and accessibility requirements

Descriptions of alternatives considered

One alternative considered did not include reference to chapter 70.02 RCW or federal privacy laws.

Least burdensome determination

The proposed rule is the least burdensome option as it provides clear direction on how long records must be maintained and references appropriate statutes for accessibility and destruction.

WAC 246-817-315 Business records accessibility

Descriptions of alternatives considered

The original proposal deleted language in WAC 246-817-310 regarding ownership and lessee information of dental equipment and dental offices. Stakeholder comments received at the April 18, 2014 hearing recommended the commission keep these requirements.

An additional alternative considered a definition of a licensed owner dentist.

Least burdensome determination

The proposed rule is the least burdensome option as it simplifies the rule language and separates subject matter content for clarity.

Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The rule does not impose more stringent performance requirements on private entities than on public entities.

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The rule does not differ from any applicable federal regulation or statute.

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

The rule is coordinated to the maximum extent practicable with other applicable laws, including the Washington State Health Care Authority record requirements (WAC 182-502-0020).