Significant Legislative Rule Analysis

Chapter 246-849 WAC
a Rule Concerning Ocularists

July 26, 2017
SECTON 1:
Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The proposal follows a comprehensive review of the chapter under RCW 43.70.41 in coordination with stakeholders. In addition, the proposed rules update definitions, clarify license application requirements and repeal mandatory reporting sections that duplicate applicable rules under chapter 246-16 WAC. The rules also establish a minimum passing score of 70 percent which coincides with the passing score of the National Examining Board of Ocularists examination, and adds a requirement for direct supervisors to maintain a tracking log of hours accumulated by the apprentice.

The department is proposing to modify existing chapter 246-849 WAC – Ocularists, by amending and repealing sections to update the rule and add clarity. The proposed rule repeals the sections listed in the table below as these requirements are included in the secretary’s rules or combined with other sections within the proposed rule.

<table>
<thead>
<tr>
<th>Existing WAC (To be Repealed from Ocularist chapter)</th>
<th>Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAC 246-849-100 Cooperation with investigation.</td>
<td>Covered by RCW 18.130.180(8) Unprofessional conduct.</td>
</tr>
<tr>
<td>WAC 246-849-200 Apprenticeship training—Definitions.</td>
<td>Included definitions in proposed WAC 246-849-020 Definitions</td>
</tr>
<tr>
<td>WAC 246-849-240 Definitions.</td>
<td>Definitions are not necessary in proposed WAC 246-849-230 Temporary practice permits</td>
</tr>
</tbody>
</table>

RCW 18.55.095 gives the secretary the authority to adopt rules to implement chapter 18.55 RCW and issue licenses to applicants who have met the education, training, and examination requirements. The current rule does not require tracking of apprenticeship hours prior to issuing a license or set a minimum score for passing the ocularist examination. Ocularist apprentices applying for an ocularist license sign a form that lists the total number of hours they have completed during their apprenticeship. This form does not track how or when the apprentice completed the hours, or the number of hours completed each day. For the examination, ocularists take the state administered exam and the current rule does not list a passing examination score. Over the past few years, scores have been above 80%, but if an applicant took the test and scored poorly, the department would not be able to refuse a license based on test scores because the passing grade is not included in rule. By adding these requirements, the proposed amended sections will set clearer standards for credentialing ocularists and ocularist apprentices.
SECTION 2:
Is a Significant Analysis required for this rule?

The proposed rules clarify department processes, practices, and requirements for the ocularist profession in Washington State. Portions of these proposed rules require significant analysis as defined by RCW 34.05.328(5)(c)(iii)(B) because they establish, alter, or revoke any qualification or standard for the issuance, suspension, or revocation of a license or permit. However, the department has determined that no significant analysis is required for the following portions of the chapter:

The department is proposing to modify existing chapter 246-849 WAC – Ocularists, by amending, or repealing sections in the table below.

<table>
<thead>
<tr>
<th>Non-significant rule sections</th>
<th>Justification</th>
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<tbody>
<tr>
<td>WAC 246-849-020 Definitions.</td>
<td>Edited to clarify language and combine definitions from WAC 246-849-200 and -240. Does not meet the definition of a significant legislative rule under RCW 34.05.328(5)(c).</td>
</tr>
<tr>
<td>WAC 246-849-030 Mandatory reporting.</td>
<td>The rule deletes duplicative information and incorporates chapter 246-16 WAC by reference, and is exempt under RCW 34.05.328(5)(b)(iii).</td>
</tr>
<tr>
<td>WAC 246-849-210(1)-(2), (4)-(6) Ocularist apprentices.</td>
<td>The rule is clarified without changing its effect and is exempt under RCW 34.05.328(5)(b)(iv).</td>
</tr>
<tr>
<td>WAC 246-849-220(1)-(2), (4) Application for examination.</td>
<td>The rule is clarified without changing its effect and is exempt under RCW 34.05.328(5)(b)(iv).</td>
</tr>
<tr>
<td>New Section: WAC 246-849-225 Initial application requirements for licensure as an ocularist.</td>
<td>Added section to separate examination requirements from initial application requirements does not change effect and is exempt under RCW 34.05.328(5)(b)(iv).</td>
</tr>
<tr>
<td>WAC 246-849-230 Temporary practice permits.</td>
<td>The rule is exempt under RCW 34.05.328(5)(b)(iii).</td>
</tr>
<tr>
<td>WAC 246-849-270 Service disclosure.</td>
<td>The rule is exempt under RCW 34.05.328(5)(b)(iii).</td>
</tr>
<tr>
<td>WAC 246-849-040 Health care institutions. WAC 246-849-050 Ocularist associations or societies. WAC 246-849-060 Health care service contractors and disability insurance carriers. WAC 246-849-070 Professional liability carriers. WAC 246-849-080 Courts. WAC 246-849-090 State and federal agencies.</td>
<td>These rules are repealed and replaced by language in 246-849-030 incorporating requirements in chapter 246-16 WAC by reference, and are exempt under RCW 34.05.328(5)(iii).</td>
</tr>
</tbody>
</table>

SECTION 3:
Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

The goal of chapter 18.55 RCW is to promote the public from potential harm that could occur under the unregulated practice of an ocularist. The statute creates licensing, education, and scope of practice standards that demonstrate competence to safely provide ocularist services to the public.

The proposed rules implement the statute’s objectives and authority by:

- Setting standards for the education, training, and licensure of ocularists;
• Supporting the overarching goal of chapter 18.55 RCW to make sure that ocularist services are provided by competent, appropriately educated and trained ocularists.

SECTION 4:

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 goals and objectives of the statute are met by providing clearly written and appropriate rules. The department determined that the proposed rules are needed because they provide guidance where the statute does not clearly define the requirements for obtaining an ocularist credential. The proposed rules represent the department’s commitment to achieve its statutorily defined goals and objectives.

The department and stakeholders agreed that rulemaking is appropriate to promote clear and consistent guidance to persons seeking and maintaining an ocularist license. Rulemaking provides applicants with articulately described education and licensing requirement guidelines for licensure. Additionally, concisely written rules assure a level of confidence and safety that patients and families can rely on when receiving services from qualified professionals in a regulated environment.

If the rules are not adopted, there will continue to be confusion about the standards that apply to licensed ocularists and ocularist apprentices.

SECTION 5:

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 portions of the proposed rule that are significant are analyzed below. As addressed above, other portions of the proposed rule are not significant and are therefore not included in this analysis.

WAC 246-849-210(3)

Description: The current rule does not require apprentices, or their primary supervisor, to record the number of apprenticeship hours that occur during the apprenticeship. In current practice, apprentices and their supervisors attest to completing the hours on their application form. The amended rule sets a new standard and requires the
apprentice and the primary supervisor to maintain a record of apprenticeship hours, verify the hours by initialing, and to make the record available upon request of the secretary or the secretary’s designee.

Cost/benefit analysis:

Adding this additional task for apprentices and supervisors does not provide a significant burden to either professional. Tracking and recording hours is a common practice among healthcare professionals. This requirement provides an additional level of proof that apprentices have completed the required hours. It also benefits the department as it allows for verification of the number of hours completed and demonstrates that both the apprentice and primary supervisor concur with the recorded hours.

**Amended WAC 246-849-220(3) – Application for examination**

Description: The current rule allows applicants who fail to “obtain a satisfactory grade” to retake the examination, however the rule does not set a passing score. Without this requirement in rule, applicants, and department staff qualifying applicants, are unsure of the score the applicants must achieve to pass. The proposed rule establishes a passing examination score of 70 percent. This level was chosen as it matches the passing score of the examination administered nationally by the National Board of Examining Ocularists.

Cost/Benefit Analysis:

Setting a minimum passing score in rule establishes an acceptable competency standard for the profession and does not burden an applicant with any additional cost. If an applicant failed to attain an acceptable minimum score, they would be required to pay a re-examination fee of $125. Over the past 10 years, 3 of 3 applicants passed with scores of at least 88 percent. The apprenticeship requires 10,000 supervised hours. Past examination scores clearly illustrates the apprenticeship successfully prepares apprentices to pass the exam with a score of at least 70 percent or greater.

Having a minimal passing score in rule clearly establishes and supports acceptable competency standards for transitioning from an apprentice, to a licensed oculist. Setting the score in rule benefits both applicants and department staff and increases transparency. For applicants it sets clear expectations and for department staff it defines credentialing standards for approving applications.

**SECTION 6:**

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.

Program staff held open public meetings and invited all stakeholders and licensees to attend in-person or by telephone to discuss updating the chapter. All who attended concurred that updates were needed. Adding the requirement of tracking hours, and setting a minimum passing score of 70 percent, are necessary to fully implement RCW 18.55.095(3) and RCW 18.55.045.

**Amended WAC 246-849-210(3)**

RCW 18.55.095(3) gives the secretary the authority to license any applicant who has met the education, training, and examination requirements for licensure. Without requiring a record of apprenticeship hours, the department does not have a way to verify that the apprentice completed the required hours for licensure. One alternative considered included leaving the current rule as written, which would continue to make verifying apprenticeship hours impossible. Program staff also discussed different ways to verify completion of hours, including submitting a record of all hours with the application. A less burdensome alternative was to require the apprentice to maintain the record with the supervisor and verify completion of the hours, and make the record available upon request. This option was chosen because it does not require an additional submission of paperwork with the application.

**Amended WAC 246-849-220(3):**

RCW 18.55.045 gives the secretary the authority to approve a minimum examination passing score. The department chose to be consistent with standards already established by the National Examining Board of Ocularists. This will ensure an applicant has gained acceptable knowledge to practice as an ocularist. Without a passing score included in rule, the secretary does not have a concrete way of setting standards for licensure. The department considered leaving the rule as written, but this would continue the lack of clarity around the passing examination score.

**SECTION 7:**

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 violate requirements of federal or state law.
SECTION 8:
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.

SECTION 9:
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.

SECTION 10:
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.

There are no other applicable laws.