

# **Significant Legislative Rule Analysis**

WAC 246-922-230

Rule Concerning Prohibited Transactions for  
Podiatric Physicians and Surgeons

August 21, 2019

## **SECTION 1:**

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

Chapter 18.22 RCW regulates the practice of podiatric medicine in the state of Washington by establishing the Podiatric Medical Board (board). The intent of this chapter is to ensure the safe and effective delivery of health care by podiatric physicians and surgeons. Under RCW 18.22.015(4), the board has the power to make such rules and regulations as are necessary to implement this chapter.

During recent rulemaking, 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modifying prefabricated orthotic devices and selling them to customers as custom fabricated or custom made devices was repealed because the language was not appropriate for a definition.

At the rule adoption hearing for the rulemaking mentioned above, the Washington State Podiatric Medical Association (WSPMA) requested that the board refile the CR102 to relocate the language to another section of rule rather than repeal it as this rule provides important protections for patients and sets 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 stricken language is important, the scope of rulemaking did not allow for additional sections of rule to be open. The board did, however, authorize rule-making to address the concern raised by WSPMA.

The board is proposing to amend WAC 246-922-230 to appropriately include the repealed language in this rule section because it relates to prohibited transactions by podiatric physicians and surgeons and this is the most appropriate location for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

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## **SECTION 2:**

**Is a Significant Analysis required for this rule?**

Yes, as defined in RCW 34.05.328, the proposed rules require a significant analysis, as any violation of the proposed rule would subject a violator to a penalty or sanction.

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## **SECTION 3:**

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

The intent of chapter 18.22 RCW is to ensure the safe and effective delivery of health care by podiatric physicians and surgeons. The rules implement the intent of the statute by clarifying that adjusting or modifying prefabricated orthotic devices and selling them to customers as custom fabricated or custom made devices is prohibited.

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## **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 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 device. The proposed rule represents the board's commitment to hold licensees to a high standard of integrity while maintaining patients' trust in the profession.

The board considered not reinstating the previously stricken language and relying instead on the statute governing unprofessional conduct (RCW 18.130.180), however, the board determined that the proposed rule amendment is the least burdensome as it eliminates any confusion and provides very clear expectations for podiatric physicians who provide both custom and prefabricated orthotics to patients.

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## **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.**

### **WAC 246-922-230 Prohibited Transactions**

The proposed rule prohibits a podiatric physician and surgeon from adjusting or modifying prefabricated orthotic devices and selling them to customers as custom fabricated or custom made devices. The rule amendment is intended to ensure podiatric physicians are not deceiving their patients by presenting and charging fees for custom crafted orthotics that in reality are off-the-shelf products that have been modified or adjusted. This proposed rule is not a new requirement but rather a change in placement of this language. The proposed language had formerly been in a definition; however, enforcement requirements are inappropriate for definitions. The language was struck from the definitions section during previous rulemaking and the board authorized new rulemaking to reinstate the language in this section, the most appropriate section of this chapter.

### **Rule Cost/Benefit Analysis**

There is no cost for licensed podiatric physicians to comply with this proposed rule. The proposed rule details specific transactions that are deceptive and, as such, are not allowed. The benefit of the proposed rule amendment is that it provides clear instruction that adjusting or modifying prefabricated orthotic devices and then selling them as custom fabricated or custom made is prohibited. This eliminates any perceived ambiguity for both podiatric physicians and their patients. The proposed rule does not prevent a podiatric physician from adjusting or

modifying prefabricated orthotic devices, so long as the podiatric physician does not claim such adjusted or modified orthotic devices are custom fabricated or custom made.

The board believes that the proposed rule amendment provides clear expectations to licensed podiatric physicians, as well as better service to their patients.

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## **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.**

This is language stricken during a previous rule making, with the intention of moving it to a more appropriate section. Therefore no other language was considered.

The board considered not reinstating the previously stricken language and relying instead on the statute governing unprofessional conduct (RCW 18.130.180), however, the board determined that the proposed rule amendment is the least burdensome as it eliminates any confusion and provides very clear expectations for podiatric physicians who provide both custom and prefabricated orthotics to patients.

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## **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 proposed rules do not require those to whom it applies to take an action that violates requirements of federal or state law.

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## **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 proposed rules do not impose more stringent performance requirements on private entities than on public entities.

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## **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 proposed rules do not differ from any applicable federal regulation or statute.

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## **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.