

Draft

Significant Legislative Rule Analysis (SA)

Rules Concerning Establishing Standard Universal Precautions and Sterilization Requirements for Body Art, Body Piercing and Tattooing

WAC 246-145-001- Purpose and scope

WAC 246-145-010- Definitions

WAC 246-145-015- Restrictions

WAC 246-145-020- Standard universal precautions for preventing the spread of disease in electrology

WAC 246-145-030- Sterile procedures in electrology

WAC 246-145-040- Penalty for not complying with rules

WAC 246-145-050- Standard universal precautions for preventing the spread of disease in body art, body piercing and tattooing.

WAC 246-145-060- Sterile procedures in body art, body piercing and tattooing.

Section 1. What is the scope of the rule?

This proposed rule amends chapter 246-145 WAC to revise existing rules that regulate electrology and tattooing. The proposed rules also add requirements for the two newly recognized practices of performing body art and body piercing.

Need demographics of impacted parties (is there an estimate of the number of tattoo parlors?)

The Department of Health (DOH) is proposing this rule because the Washington State Legislature mandated the department to adopt rules, in accordance with nationally recognized professional standards. The rule establishes precautions against the spread of disease, including the requirement to sterilize needles and other instruments used by electrologists and other persons engaged in the practice of body art, body piercing, and tattooing. According to the Department of Licensing (DOL), they have identified approximately 1,050 shops and 2,228 individuals that will be required to be licensed to practice body art, body piercing and tattooing.

The proposed rule, as drafted, adds body art and body piercing into the scope of regulated practices; adds several new definitions that pertain to these newly regulated practices; adds a section that restricts specific unsafe practices; creates separate standard universal precautions and sterilization requirements for electrology; and adds body art and body piercing to the standard universal precautions and sterilization requirements for tattooing.

In addition to the rule DOH is proposing, DOL is required to establish licensing requirements for shops and businesses and individuals performing body art, body piercing and tattooing procedures. The

Body Art, Body Piercing and Tattooing Advisory Committee was established by DOL to assist them in drafting licensing requirements. DOH shared the draft rule at the January 29, 2010 and February 11, 2010 meetings and received minor edits from members of the Advisory Committee and other attendees.

Section 2. What are the general goals and specific objectives of the proposed rule’s authorizing statute?

RCW 70.54.340

**Electrology, body art, body piercing, and tattooing — Rules, sterilization requirements.
(Effective July 1, 2010.)**

The secretary of health shall adopt by rule requirements, in accordance with nationally recognized professional standards, for precautions against the spread of disease, including the sterilization of needles and other instruments, including sharps and jewelry, employed by electrologists, persons engaged in the practice of body art, body piercing, and tattoo artists. The secretary shall consider the standard precautions for infection control, as recommended by the United States centers for disease control, and guidelines for infection control, as recommended by national industry standards in the adoption of these sterilization requirements.

The general goal of RCW 70.54.340 is to establish standard universal precautions for preventing the spread of diseases by using sterilization procedures and infection control in the practices of body art, body piercing and tattooing. The standards for sterilization and infection procedures are to be consistent with nationally recognized professional standards.

The statute’s objective the rule will implement is:

Adopt rules that stop the spread of disease by requiring standard infection control procedures and sterile needles and other instruments be used in tattoo, body art and body piercing procedures.

Section 3. What is the justification for the proposed rule package?

The proposed rule will achieve the authorizing statute’s goals and objectives because the proposed rule is consistent with the nationally recognized professional standards that guards against the spread of disease and establishes infection control for the newly recognized profession.

The Department of Health has assessed and determined that there are no feasible alternatives to rulemaking. Revising the existing regulations are necessary to require the practices of body art and body piercing comply with the universal precautions for infection control and sterilization.

If this rule is not adopted, the result would be that the Department of Health would not comply with the legislative mandate. Also the state would not have standards for infection control and sterilization procedures in the practices of body art and body piercing.

Section 4. What are the costs and benefits of each rule included in the rules package? What is the total probable cost and total probable benefit of the rule package?

1. Identification of total number of rules in package

The proposed rule includes eight (8) sections.

2. Non-Significant Rule Identification Table

The Department of Health has determined that the following sections are not-significant for the reasons provided. These sections are not included in the following cost/benefit analysis.

Table: Non-Significant Rule Identification

#	WAC Section	Section Title	Reason
1	WAC 246-145-001	Purpose and Scope	Removes term “commercial” and adds body art and body piercing as regulated “practices.” The Department will assess the impact of the change in scope in the rules deemed “significant” below.
2	WAC 246-145-010	Definitions	Adds nineteen (19) new definitions to the section to define terms used in the proposed rule. Definitions should not create new regulatory requirements. Changes in definitions are analyzed in the sections below.
3	WAC 246-145-020	Standard universal precautions for preventing the spread of disease in electrology	Removes (strikes) reference to tattooing in this section. Tattooing regulations related to standard universal precautions are moved to the new WAC 246-145-050 that addresses standard universal precautions for preventing the spread of disease for individuals that perform tattooing. Clarifies and amends selected terms used in the rule to make them consistent with current industry terms.
4	WAC 246-145-030	Sterile procedures in electrology	Removes (strikes) reference to tattooing in this section. Tattooing regulations related to sterile procedures are moved to the new WAC 246-145-060 that requires individuals to perform tattooing using sterile procedures.

5	WAC 246-145-040	Penalty for not complying with rules	Removes (strikes) reference to tattoo artists in this section. Tattoo, body art and body piercing shops and businesses and individuals who perform body art, body piercing and tattooing must obtain a license from the Department of Licensing. The individuals and shops/businesses will be regulated, and disciplined if necessary, under the Uniform Regulation of Business and Professions Act.
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3. Significant Rule Analysis

A. WAC 246-145-015-Restrictions

Overview

This is a new section that restricts electrologists and individuals licensed to perform body art, body piercing and tattooing from performing procedures as follows:

- (a) While under the influence of alcohol or drugs;
- (b) If they have weeping dermatitis or draining sores;
- (c) On a client who appears to be under the influence of alcohol or drugs; or
- (d) On a client who has evident skin lesions or skin infections in the area of the procedure, including sunburn.

The proposed rule also prohibits animals, except for service dogs for visually or hearing impaired persons, to be present in the facility where electrologists and individuals licensed to perform body art, body piercing and tattooing are performing procedures.

These restrictions are considered standard of care in the industry and are necessary to ensure the people who perform these procedures and the people that elect to have these procedures are protected.

Cost/Benefit Analysis

There is no regulatory compliance cost associated with the section. The benefit is that the public will be protected from unsafe practices.

B. WAC 246-145-050 Standard universal precautions for preventing the spread of disease in body art, body piercing and tattooing.

Overview

Creates a new section to identify required standard universal precautions for individuals who perform body art, body piercing and tattooing to follow. Although this is a “new” proposed section, there are existing standard precautions to prevent the spread of disease for tattooing in WAC 246-145-020. This rule package reconfigures the rules so there are separate rules for electrology and separate rules for

tattoo, body art and body piercing. Those individuals performing tattooing, body art and body piercing will be required to obtain a license from DOL.

The proposed rule generally follows the scope of the existing rules, but does amend them to provide additional direction to licensees and also to make them consistent with the national standards.

Cost/Benefit Analysis

The proposed precautions, collectively, represent the standard of care or best practices in the field of tattooing, body art and body piercing. In most cases, the department assumes that most of the individuals are already complying with the proposed precautions and therefore there will only be nominal costs for licensees to comply with this rule.

C. WAC 246-145-060 Sterile procedures in body art, body piercing and tattooing

Overview

Creates a new section to identify required sterile procedures for licensed individuals who perform body art, body piercing and tattooing. Although this is a “new” proposed section, there are existing sterilization requirements to prevent the spread of disease for tattooing in WAC 246-145-020. This rule package reconfigures the rules so there are separate rules for electrology and separate rules for tattoo, body art and body piercing. Those individuals performing tattooing, body art and body piercing will be required to obtain a license from DOL.

Cost/Benefit Analysis

The proposed requirements to ensure sterile procedures, collectively, represent the standard of care or best practices in the field of tattooing, body art and body piercing. In most cases, the department assumes that most of the individuals are already complying with the proposed requirements that pertain to performing sterile procedures and therefore there will only be nominal costs for licensees to comply with this rule.

Rule Package Cost-Benefit Conclusion

The department revised the existing standards to provide additional direction to the licensees. Many of the proposed changes are consistent with national standards (e.g., National Institute for Occupational Safety and Health –Centers for Disease Control and Prevention (CDC); Recommended Guidelines for Disinfection and Sterilization in Healthcare Facilities 2008 – (CDC); and Department of Labor – Occupational Safety & Health Administration (OSHA))

The department also added language after considering laws from other states that regulate tattooing, body art and body piercing. These states include but are not limited to Oregon, Alaska, Iowa, South Carolina, West Virginia, Wisconsin and New Jersey.

In conclusion, although the proposed rules may impose a nominal cost to licensees, the probable benefits of assuring consistent and complete precautions, standards and procedures that will protect licensed individuals and the people that elect to have procedures are greater than the probable costs.

Section 5. What alternative versions of the rule did we consider? Is the proposed rule the least burdensome approach?

Descriptions of alternatives considered and least burdensome determination

The Department of Health considered a wide array of alternatives when drafting the proposed rule. The Department sought input on issues from a list of interested parties and from attendees at meetings of the Body Art, Body Piercing and Tattooing Advisory Committee. In some cases, the department considered but rejected proposed changes to the rules. For example, the Department, when determining the appropriate frequency for use of biologic indicators to test the effectiveness of sterilizers, considered implementing the CDC recommended guideline of testing at least weekly and determined testing at least monthly would achieve the same benefit and was less burdensome.

Section 6. Did you determine that the rule does not require anyone to take an action that violates 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.

Section 7. Did we determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless the difference is required in federal or state law?

The Department of Health determined that the rule does not impose more stringent performance requirements on private entities than on public entities.

Section 8. Did you determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, did we 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 9. Did we demonstrate that the rule has been coordinated, to the maximum extent possible, with other federal, state, and local laws applicable to the same activity or subject matter?

There are no other applicable laws.