



# RULE-MAKING ORDER

**CR-103E (July 2011)**  
**(Implements RCW 34.05.350)**

**Agency:** Department of Health- Board of Pharmacy

**Emergency Rule Only**

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:** WAC 246-869-105-Continuity of Care Refills in Proclaimed Emergencies. This filing extends emergency rules filed on May 4, 2016 as WSR 16-11-002, while the commission completes permanent rulemaking to allow temporary prescription refills of legend drugs and certain controlled substances for patients displaced from their homes or usual pharmacies during an event resulting in a governor's emergency proclamation.

**Citation of existing rules affected by this order:**

Repealed: None  
 Amended: None  
 Suspended: None

**Statutory authority for adoption:** RCW 18.64.005

**Other authority :** RCW 18.64.005

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: See Attachment A

**Date adopted:** 08/22/2016

**NAME (TYPE OR PRINT)**  
Tim Lynch

**SIGNATURE**

**TITLE**  
Commission Chair

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: August 22, 2016**

**TIME: 3:48 PM**

**WSR 16-17-114**

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

|   |     |          |         |          |          |          |
|---|-----|----------|---------|----------|----------|----------|
| <b>Federal statute:</b>                 | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
| <b>Federal rules or standards:</b>      | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
| <b>Recently enacted state statutes:</b> | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |

**The number of sections adopted at the request of a nongovernmental entity:**

|  |     |          |         |          |          |          |
|--|-----|----------|---------|----------|----------|----------|
|  | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
|--|-----|----------|---------|----------|----------|----------|

**The number of sections adopted in the agency's own initiative:**

|  |     |          |         |          |          |          |
|--|-----|----------|---------|----------|----------|----------|
|  | New | <u>1</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
|--|-----|----------|---------|----------|----------|----------|

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

|  |     |          |         |          |          |          |
|--|-----|----------|---------|----------|----------|----------|
|  | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
|--|-----|----------|---------|----------|----------|----------|

**The number of sections adopted using:**

|                                       |     |          |         |          |          |          |
|---------------------------------------|-----|----------|---------|----------|----------|----------|
| <b>Negotiated rule making:</b>        | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
| <b>Pilot rule making:</b>             | New | <u>0</u> | Amended | <u>0</u> | Repealed | <u>0</u> |
| <b>Other alternative rule making:</b> | New | <u>1</u> | Amended | <u>0</u> | Repealed | <u>0</u> |

**Attachment A to CR-103E**  
**Emergency Adoption of New**  
**WAC 246-869-105 Continuity of Care Refills in Proclaimed Emergencies**

**Reasons for this (emergency) finding:**

Governor Inslee on June 25, 2015 issued State of Emergency Proclamation 15-11 for all 39 counties of the state. The proclamation notes that the wildfire conditions anticipated to continue into autumn 2015 pose “the threat to life and property from wildfires (that) is significant and may cause extensive damage to homes, businesses, public facilities, resources, infrastructure and utilities, impacting the life and health of our citizens throughout the state; this threat may affect life, health, property, or the public peace, and is a public disaster demanding immediate action...”

On August 18, 2015, there were 1,200 active wildfires in Washington State, causing entire towns to be evacuated. Wildfires have destroyed homes and businesses in several Washington State counties, causing residents to live in emergency shelters or other temporary arrangements, sometimes leaving prescription medications or prescription records behind. In some cases the patient's prescriber or community pharmacy became inaccessible due to wildfire evacuations or property destruction.

Although the 2015 wildfire season has ended, the emergency rule must remain in effect while the Pharmacy Quality Assurance Commission completes permanent rulemaking in case the state experiences another major disaster or event that threatens patients' access to their prescription medications.

The rule allows a licensed pharmacist to legally provide a temporary prescription refill during a governor-proclaimed emergency when the patient's pharmacy access is disrupted.

Immediate adoption of the rule is necessary for the preservation of the public health, safety or welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

The commission filed a notice of intent to adopt the emergency rule as a permanent rule (preproposal statement of inquiry) on December 21, 2015, WSR 16-01-156. The CR-102 has been filed with the Code Revisers Office, WSR# 16-16-012, and a public hearing is scheduled for September 29, 2016.

NEW SECTION

**WAC 246-869-105 Continuity of care refills in proclaimed emergencies.** Notwithstanding WAC 246-869-100 (2)(f), when the governor issues an emergency proclamation for an event which prevents continuity of health care for persons and animals because their prescribed medications are no longer available to them due to the emergency event, pharmacists and pharmacies may provide emergency prescription supplies for medications during the period of the proclaimed emergency as provided below:

(1) An initial supply of up to thirty days of current prescriptions for legend drug (noncontrolled) medications or seven-day supply of current prescriptions for controlled substance medications in Schedules III, IV, and V may be provided to patients under the following conditions:

(a) Presentation of a valid prescription container complete with legible label indicating there are remaining refills, or confirmation of the prescribed medication and available refills by review of the patient's current medical records or pharmacy records; or

(b) If the prescription is expired and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two hour supply of the prescribed medication as described in WAC 246-869-100 (2)(f).

(2) For each medication dispensed under this section, a pharmacist shall:

(a) Document the dispensing as a prescription, noting where the information from subsection (1)(a) of this section was obtained, whether from the prescription container, the patient's prescriber or from the pharmacy records;

(b) Inform the patient's provider and the pharmacy at which the patient obtains his or her medications of the dispensing as soon as possible following the emergency dispensing;

(c) Mark the face of the prescription as an "emergency" prescription.

(3) Nothing in this rule modifies insurers' requirements for coverage and payment for prescribed medications.