



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: January 28, 2020

TIME: 9:58 AM

WSR 20-04-029

Agency: Department of Health

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR ; or

Expedited Rule Making--Proposed notice was filed as WSR ; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Proposal is exempt under RCW .

Title of rule and other identifying information: (describe subject) WAC 246-08-400 Health care providers charging for searching and duplicating health care records. The Department of Health (department) is proposing to increase the maximum fees providers may charge to search or duplicate records pursuant to RCW 70.02.010(38).

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
03/12/2020	9:30 a.m.	Department of Health, Town Center 2, Room 145 111 Israel Road SE, Tumwater, WA 98501	

Date of intended adoption: 03/19/2020 (Note: This is NOT the effective date)

Submit written comments to:

Name: Julianne Wlazlak  
Address: PO Box 47850 Olympia, WA 98540-7850  
Email: <https://fortress.wa.gov/doh/policyreview>  
Fax: 360-236-2901  
Other: N/A  
By (date) 03/12/2020

Assistance for persons with disabilities:

Contact Julianne Wlazlak  
Phone: (360)236-4878  
Fax:  
TTY: (360) 833-6388 or 711  
Email: [julianne.wlazlak@doh.wa.gov](mailto:julianne.wlazlak@doh.wa.gov)  
Other:  
By (date) 02/27/2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose is to adjust the maximum fees health care providers are allowed to charge for searching and duplicating health care records. The adjustment is legislatively required to occur every two years, and must be based on the change in the Consumer Price Index (CPI) for the Seattle-Tacoma area. The current rates reflect the change over time from the original (1993) rates in RCW 70.02.010(38).

**Reasons supporting proposal:** The proposed rule sets reasonable fees that providers are allowed to charge for cost recovery for searching and duplicating health care records. The CPI for the Seattle-Tacoma area changed from 254.886 in 2016 to 271.089 in 2018, which is a 6.3 percent increase.

**Statutory authority for adoption:** RCW 70.02.010(38) and RCW 43.70.040

**Statute being implemented:** RCW 70.02.010(38)

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Washington State Department of Health  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Julianne Wlazlak	111 Israel Rd, Tumwater WA 98501	360-236-4878
Implementation:	Julianne Wlazlak	111 Israel Rd, Tumwater WA 98501	360-236-4878
Enforcement:	Julianne Wlazlak	111 Israel Rd, Tumwater WA 98501	360-236-4878

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328(5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.



**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

**Date:** 01/27/2020

**Signature:**

**Name:** Jessica Todorovich for John Wiesman, DrPH, MPH



**Title:** Chief of Staff for Secretary of Health

AMENDATORY SECTION (Amending WSR 17-17-019, filed 8/7/17, effective 9/7/17)

**WAC 246-08-400** (~~(How much can a)~~) **Health care providers** (~~(charge)~~) **charging for searching and duplicating health care records** (~~(?)~~). RCW 70.02.010(~~(+37)~~) (38) allows health care providers to charge fees for searching and duplicating health care records. The fees a provider may charge cannot exceed the fees listed below:

(1) Copying charge per page:

(a) No more than one dollar and (~~(seventeen)~~) twenty-four cents per page for the first thirty pages;

(b) No more than (~~(eighty-eight)~~) ninety-four cents per page for all other pages.

(2) Additional charges:

(a) The provider can charge a (~~(twenty-six)~~) twenty-eight dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.

(3) HIPAA covered entities as defined in 45 C.F.R. Sec. 103 may not charge fees or costs that are not authorized by, or are prohibited by, Federal HIPAA regulation 45 C.F.R. Sec. 164.