

April 30, 2020

Carly Bartz-Overman  
Department of Health  
101 Israel Road SE  
Tumwater, WA 98501

Dear Ms. Bartz-Overman,

On behalf of the Washington State Hospital Association, thank you for the opportunity to provide feedback on the prescription monitoring program (PMP) – electronic health record (EHR) integration hardship waiver required under SB 5380. We offer the following comments on behalf of the 101 hospitals and health systems who serve Washington state residents.

First, we extend our thanks to Secretary Weisman for the recent announcement regarding the nine-month waiver from complying with the requirements of RCW 70.225.090(2)(a). As the letter announcing this waiver acknowledges, hospitals and health care providers are under extreme pressure as they work to respond to the COVID-19 outbreak in Washington. Staff – including administrators and leaders – have been redeployed to respond to the needs of this unprecedented situation. For hospitals who had planned implementing solutions to help them comply with these requirements, this delay will be helpful as many are struggling with the capacity and resources to ensure this work moves forward on its original timeline.

Looking beyond September 30, 2021, we offer the following comments to ensure that hospitals and health systems experiencing economic hardship, technological limitations, or exceptional circumstances are eligible to submit a waiver request through this process. We have also attached comments to the stakeholder draft to accomplish the following changes.

We request that the department modify language to allow hospitals, in addition to clinics, to apply for an economic hardship due to operating low-income facility. The stakeholder draft would allow clinics, if serving a minimum of 30% Medicaid patients, to submit a waiver request. We believe this should apply to hospitals as well, as the intent of the policy seems to be to support facilities that are providing care to low-income populations. Further, the current pandemic is causing an abrupt and unprecedented financial cliff for many facilities, including those serving a high percentage of Medicaid. Allowing hospitals in addition to clinics to submit a waiver for operating a low-income facility would be a safety valve for hospitals that may need to prioritize resources to support direct patient care activities, rather than technological upgrades.

In addition, we agree with comments made by the Washington State Medical Association, requesting that the Department add an exemption for facilities utilizing an EHR technology through a vendor that cannot or refuses to connect to the state's Health Information Exchange (HIE) for the purposes of PMP integration. Without such an exemption, DOH is essentially requiring entities to utilize a third-party integrator, adding IT complexity and layering additional costs to an already technologically difficult and expensive undertaking, heading into a period of time of great operational and financial uncertainty for hospitals and health care providers. We request DOH adopt language that allows entities to submit a waiver request if, through no fault of their own, their electronic health records platform vendor does not offer a financially viable solution to connect their EHR directly with the HIE.

WSHA appreciates DOH including an allowance for “exceptional circumstances”, including “unforeseeable circumstances”. However, to make this allowance meaningful, we recommend removing language that would limit an unforeseeable circumstance to one that results in a statewide emergency. Removing the word “other” in (3)(c)(ii) would alleviate this concern.

Finally, there is no language in statute, nor does SB 5380 give DOH enforcement and investigatory authority regarding the hardship exemption process. We believe that striking audit and investigation language and adding language that permits DOH to check applications for completeness and accuracy is more reflective of current authority.

WSHA appreciates the continued opportunity to provide feedback on the draft hardship exemptions, and the collaborative approach the Department has taken to developing these rules. We look forward to further collaboration as DOH finalizes the waiver rule. Should you have additional questions on these recommendations, please contact Jaclyn Greenberg, [JaclynG@wsha.org](mailto:JaclynG@wsha.org).

Sincerely,

Jaclyn Greenberg, JD, LLM  
Policy Director, Legal Affairs  
Washington State Hospital Association