



May 12, 2021

To Whom It May Concern,

The Washington State Board of Health (Board) adopted amendments to chapter 246-101 WAC, Notifiable Conditions at their March 10, 2021 meeting. Chapter 246-101 WAC outlines requirements for information that health care providers, health care facilities, laboratories, and other entities must report that is necessary for public health officials to protect the public's health by tracking communicable diseases and other conditions.

Purpose of Rulemaking

The purpose of rulemaking within chapter 246-101 WAC is to better protect public health by improving public health authorities' understanding of emerging conditions, allowing more thorough case investigations, and improving the public health response to infectious and noninfectious conditions. The public health goals for these changes are to reduce the risk of transmission of disease and prevent serious complications and fatalities.

The adopted rules make significant revisions to the chapter, including:

- Adding notification and specimen submission requirements for 21 new conditions and revising notification and specimen submission requirements for all existing conditions;
- Eliminating three categories of conditions ("other rare diseases of public health significance", "emerging conditions with outbreak potential", and "disease of suspected bioterrorism origin");
- Eliminating notification requirements for veterinarians and clarifying requirements for veterinarians to cooperate with public health authorities during case investigations;
- Establishing notification requirements for the Washington State Department of Agriculture;
- Updating local health jurisdiction duties to reflect current technology used for notifying the Department, clarifying existing and establishing new notification timelines, and clarifying notification, case report, and outbreak report content requirements;
- Adding preferred language, race, and ethnicity to the list of data components required to be reported with each case of a notifiable condition, as well as defined reporting categories for each;
- Updating reference to the Security and Confidentiality Guidelines developed by the Centers for Disease Control and Prevention;

- Updating statutory references throughout the chapter as well as making editorial revisions to be consistent with legislation that passed during the 2020 legislative session (Engrossed Substitute House Bill 1551, Modernizing the control of certain communicable diseases); and
- Improving overall clarity and usability of the chapter by merging health care provider and facilities rules, repealing unnecessary rules, clarifying requirements for suspected cases of notifiable conditions, and revising language consistent with clear rule writing standards.

The adopted rules will become effective January 31, 2022. A copy of the adopted rules are attached.

Changes to the Proposed Rules

The adopted rules are different from the text of the proposed rule as it was published in the Washington State Register 21-11-040. The following clarifying and non-substantive changes were made to the proposed rules upon adoption:

- WAC 246-101-010 Definitions, abbreviations, and acronyms.** In subsection 13, the definition of “health care-associated infection” was revised to replace the reference to “admission to the hospital” with “admission to the health care facility.” This revision provides consistency between other definitions in the chapter.
- WAC 246-101-101 Notifiable conditions – Health care providers and health care facilities.** In Table HC-1 (Conditions Notifiable by Health Care Providers and Health Care Facilities), the spelling of amebic meningitis was revised to reflect the spelling used by the Centers for Disease Control and Prevention.
- WAC 246-101-201 Notifiable conditions – Laboratories.** In Table Lab-1 (Conditions Notifiable by Laboratory Directors), the spelling of amebic meningitis was revised to reflect the spelling used by the Centers for Disease Control and Prevention.
- WAC 246-101-635 Special Conditions – AIDS and HIV – Department.** Changed the tense of “report” in subsection (2)(b) from present to past, so that the subsection reads: “Referral of the individual tested, diagnosed, or reported with HIV to social and medical services.” The revision is consistent with other changes in WAC 246-101-635.

Comments on Proposed Rules

The Board received written comments from more than 60 individuals and organizations during the formal public comment period and received verbal testimony from 13 individuals at the public rules hearing held on March 10, 2021. The following table is a summary of comments received on the proposed rules and the Board’s response:

| Comments on the Proposed Rule |
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| Topic: Aspergillus Infection/Aspergillosis (WAC 246-101-101 & WAC 246-101-201) |
| Comment: Add aspergillus infection/aspergillosis to the list of notifiable conditions. Require health care facilities to notify the public (e.g. families and caregivers) of instances of aspergillosis. |
| Response: No change. Adding aspergillus infection/aspergillosis is outside of the rulemaking scope as defined in the CR-101, which outlines the list of potential new conditions to be considered for inclusion in the proposed rules. Aspergillus infection and/or aspergillosis was not included in the list. |
| Requiring public notification of diseases or other conditions is outside the scope of chapter 246-101 WAC. While there are requirements for the Department of Health to periodically distribute de- |

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| <p>identified statistical summaries and epidemiological studies based on individual case, laboratory, and investigation reports, the rules do not have requirements for public notification of disease or conditions. The Board may choose to consider addition of this condition explicitly in future rule updates.</p> |
| <p>Topic: Reporting of Race, Ethnicity, and Language Data (WAC 246-101-011)</p> |
| <p>Comment: Collection of disaggregated data for race, ethnicity, and language is necessary to accurately represent diverse communities, identify disparate impact, inform public health strategies, provide culturally and linguistically appropriate outreach and services, and inform the prioritization of resources. Revise WAC 246-101-011 to clarify that patient race, ethnicity, and preferred language reporting is voluntary. Include additional reporting categories for race (e.g., Brazilian) and preferred language (e.g., Mayan indigenous languages). Revisit race, ethnicity, and preferred language reporting categories within the year for refinement.</p> |
| <p>Response: No change. Detailed reporting categories for race, ethnicity, and language, which were informed by community organization input and feedback, were included in the proposed rules. As written, the reporting categories for race, ethnicity, and preferred language allow the patient to decline response. Incorporating the additional revisions suggested would require further engagement with subject matter and community experts, filing a new CR-102, and conducting another public rules hearing, which would have delayed the adoption and implementation of the rules. The rules will not go into effect until January 31, 2022 and staff are unable to make revisions within the year.</p> |
| <p>Topic: Require Additional Demographic Reporting (WAC 246-101-011)</p> |
| <p>Comment: Require additional demographic reporting for all notifiable conditions, including sexual orientation, gender identity, disability status, birthplace, tribal status, and Indigenous identity.</p> |
| <p>Response: No change. Inclusion of these data require significant time as well as staff and partner resources to overcome a lack of national data standards and system limitations, determine data collection and protection procedures, participate in formal tribal consultation and meaningful engagement with interested parties, communities, and more. Requiring these data to be reported in the current rule update would result in a significant delay in adoption and implementation of these rules. The Board may consider incorporating these additional demographic reporting requirements in future rulemaking.</p> |
| <p>Topic: COVID-19 Reporting (WAC 246-101-101 & WAC 246-101-201)</p> |
| <p>Comments:</p> <p>Pro: COVID-19 should be included as a notifiable condition in these permanent rules. Certain communities have been hit especially hard by COVID-19 infection. Collecting more detailed data for COVID-19 as a notifiable condition will allow public health to better identify patterns in COVID-19 transmission, morbidity, and mortality.</p> <p>Con: Coronaviruses (including SARS, MERS, and COVID-19) should not be added to the list of notifiable conditions in rule. Polymerase chain reaction (PCR) tests should not be used to determine cases of COVID-19.</p> |
| <p>Response: No change. Adding COVID-19 to the list of notifiable conditions is necessary to protect the public’s health by tracking spread of the disease during the global pandemic and beyond. The rules do not require the use of PCR tests to determine diagnoses or suspected diagnoses of COVID-19.</p> |
| <p>Topic: Definitions (WAC 246-101-010)</p> |
| <p>Comment: The definition of a “case” should not include a suspected diagnosis of a notifiable condition as it artificially inflates case counts. Changes to the definitions of “isolation” and “quarantine” are politically motivated.</p> |
| <p>Response: No change. The inclusion of “suspected diagnosis” in the definition of a “case” of a notifiable condition is consistent with current rule and practice. These definitions help ensure public health officials have the necessary information needed to control and prevent the spread of communicable disease. Revisions to the definitions of “isolation” and “quarantine” were made in</p> |

consultation with the Notifiable Conditions Technical Advisory Committee and are consistent with the Centers for Disease Control and Prevention.

Topic: Effective Date

Comments:

Pro: Adopt and implement the rules as soon as possible.

Con: Delay implementation of the rules until after the end of the public health emergency caused by the COVID-19 pandemic. The health care system is overwhelmed, and delaying implementation can reduce burden on facilities while promoting alignment of data reporting systems.

Response: No change. While there are numerous changes in the rules for the regulated community, they do not go into effect until January 31, 2022 to allow time for regulated entities to come into compliance.

Remaining Public Opposition to the Rule

The remaining opposition to the rules are described above and include the following:

- Some concerned citizens object to adding COVID-19 as a notifiable condition, and have expressed concern about the definitions for “case,” “isolation,” and “quarantine”;
- The Washington State Hospital Association, Washington State Medical Association, and Washington Health Care Association object to these rules being adopted and implemented before the end of the current public health emergency; and
- Groups including the Community Health Board Coalition, King County Pandemic and Racism Community Advisory Group, Public Health Seattle King County, Northwest Health Law Advocates, and the Washington State Coalition for Language Access want additional demographic reporting included in the rules.

Any person may petition the adoption or amendment of these rules in accordance with RCW 34.05.330.

Any questions regarding this rule adoption should be directed to Kaitlyn Donahoe, Policy Advisor for the Board, by email at kaitlyn.donahoe@sboh.wa.gov or phone at (360) 584-6737.

Respectfully,



Michelle A. Davis
Executive Director