



PROPOSED RULE MAKING

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

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DATE: October 05, 2021

TIME: 1:46 PM

WSR 21-20-127

Agency: Department of Health

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 20-15-112 ; 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) Chapter 246-100 WAC, Communicable and Certain Other Diseases. The State Board of Health (Board) is proposing amending this chapter to implement changes made by Engross Substitute House Bill (ESHB) 1551 (chapter 76, Laws of 2020) as it relates to HIV/AIDS. The Board is also proposing other technical or editorial changes as needed.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
11/10/2021	1:30 PM	In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington State. A virtual public hearing, without a physical meeting space, will be held instead. You can register in advance for this meeting at: https://us02web.zoom.us/webinar/register/WN_S8YQaN8HQY2TIXVHX7SFtQ	

Date of intended adoption: 11/10/2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Samantha Pskowski

Address: P.O. Box 47990, Olympia, WA 98504-7990

Email: <https://fortress.wa.gov/doh/policyreview>

Fax: N/A

Other: None

By (date) 10/28/2021

Assistance for persons with disabilities:

Contact Melanie Hisaw

Phone: (360) 236-4104

Fax:

TTY: 711

Email: CommunicableDisease@sboh.wa.gov

Other:

By (date) 10/22/2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rulemaking is to revise chapter 246-100 WAC to assure consistency with the statutory requirements and protect public health and safety. Revisions include, but are not limited to: (1) Establishing reporting requirements and procedures for investigations for sexually transmitted diseases; (2) Specifying behavior that endangers the public health; (3) Defining specimens that can be obtained and tests that can be administered for sexually transmitted diseases, blood-borne pathogens, and other infections; (4) Determining categories of employment that are at risk of substantial exposure to a blood-borne pathogen; and (5) Defining what constitutes an exposure that presents a possible risk of transmission of a blood-borne pathogen.

Reasons supporting proposal: During the 2020 legislative session, the legislature passed ESHB 1551, modernizing the control of certain communicable diseases. This bill modernized the state's control of communicable disease laws by ending statutory HIV/AIDS exceptionalism, reducing HIV-related stigma, defelonizing HIV exposure, and removing barriers to HIV testing. The bill took effect June 11, 2020.

The Board's CR-101, Preproposal Statement of Inquiry, identified potential revisions to both chapter 246-100 WAC, Communicable and Certain Other Diseases, and chapter 246-101 WAC, Notifiable Conditions. Proposed changes related to ESHB 1551 for chapter 246-101 WAC were adopted under a separate rulemaking process, as revisions to the Notifiable Conditions chapter were already underway at the time of filing the CR-101 to implement ESHB 1551. Amendments to chapter 246-101 WAC were adopted by the Board at its March 2021 public meeting and were limited to minor editorial revisions consistent with the changes in ESHB 1551. These changes can be found in WSR 21-11-040.

Statutory authority for adoption: RCW 43.20.050, RCW 70.24.130

Statute being implemented: ESHB 1551 (Chapter 76, Laws of 2020)

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: N/A

Name of proponent: (person or organization) Washington State Board of Health

Private

Public

Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Samantha Pskowski	101 Israel Road SE, Tumwater, WA, 98504-7990	(360) 789-2358
Implementation:	Alexandra Montaño	101 Israel Road SE, Tumwater, WA, 98504-7990	(360) 236-4205
Enforcement:	Alexandra Montaño	101 Israel Road SE, Tumwater, WA, 98504-7990	(360) 236-4205

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: Samantha Pskowski

Address: P.O. Box 47990, Olympia, WA, 98504-7990

Phone: (360) 789-2358

Fax: N/A

TTY: 711

Email: CommunicableDisease@sboh.wa.gov

Other:

No: Please explain:

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. The proposed rule does not impose more-than-minor cost to regulated entities, including enhanced service facilities and adult family homes, as well as local public health jurisdictions. The cost threshold for nursing homes/residential care facilities and public administration is \$10,276.98 and \$57,636.38 respectively. The Board assumes potential one-time costs for enhanced service facilities and adult family homes to comply with the proposed rules to range between \$0 and \$300. The Board assumes potential costs for local health jurisdictions to comply with the proposed rules to range between \$226 to \$907.

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: 10/05/2021

Signature:

Name: Michelle A. Davis



Title: Executive Director

WAC 246-100-011 Definitions. The definitions in this section apply throughout chapter 246-100 WAC unless the context clearly requires otherwise:

(1) (~~("Acquired immunodeficiency syndrome (AIDS)" means illness, disease, or conditions defined and described by the Centers for Disease Control, U.S. Public Health Service, Morbidity and Mortality Weekly Report (MMWR), April 11, 2014, Volume 63, Number RR-03. A copy of this publication is available for review at the department and at each local health department.~~

~~(2) "HIV counseling" means counseling directed toward:~~

~~(a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and~~

~~(b) Assessing the individual's risk of HIV acquisition and transmission; and~~

~~(c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.~~

~~(3)) "Anonymous HIV testing" means that the name or identity of the ((individual)) person tested for HIV will not be recorded or linked to the HIV test result. ((However, once the individual testing positive receives HIV health care or treatment services, reporting of the identity of the individual to the state or local public health officer is required.~~

~~(4)) (2) "Blood-borne pathogen" means a pathogenic microorganism that is present in human blood and can cause disease in humans, including hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and syphilis.~~

~~(3) "Board" means the Washington state board of health.~~

~~((5)) (4) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care provider with diagnosis based on clinical criteria, or laboratory criteria, or both.~~

~~((6) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.~~

~~(7)) (5) "Communicable disease" means an illness caused by an infectious agent ((which)) that can be transmitted from ((one)) a person, animal, or object to ((another)) a person by direct or indirect means including, but not limited to, transmission via an intermediate host or vector, food, water, or air.~~

~~((8) "Confidential HIV testing" means that the name or identity of the individual tested for HIV will be recorded and linked to the HIV test result, and that the name of the individual testing positive for HIV will be reported to the state or local health officer in a private manner.~~

~~(9)) (6) "Contaminated" or "contamination" means containing or having contact with infectious agents or chemical or radiological materials that pose an immediate threat to present or future public health.~~

~~((10)) (7) "Contamination control measures" means the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, and/or effect decontamination.~~

~~((11))~~ (8) "Department" means the Washington state department of health.

~~((12))~~ (9) "Detention" or "detainment" means physical restriction of activities of ~~((an individual))~~ a person by confinement for the purpose of controlling or preventing a serious and imminent threat to public health and may include physical plant, facilities, equipment, and/or personnel to physically restrict activities of the ~~((individual))~~ person to accomplish ~~((such))~~ these purposes.

~~((13))~~ (10) "Disease control measures" means the management of persons, animals, goods, and facilities that are infected with, suspected to be infected with, exposed to, or suspected to be exposed to an infectious agent in a manner to prevent transmission of the infectious agent to humans.

~~((14))~~ (11) "Health care facility" ~~((means))~~ includes:

(a) ~~((Any facility or institution))~~ Adult family homes licensed under chapter 70.128 RCW;

(b) Assisted living facilities licensed under chapter 18.20 RCW~~((, assisted living facilities,));~~

(c) Birthing centers licensed under chapter 18.46 RCW~~((, birthing centers,));~~

(d) Clinics or other settings where one or more health care providers practice;

(e) Enhanced service facilities licensed under chapter 70.97 RCW;

(f) Hospitals licensed under chapter 70.41 RCW;

(g) Nursing homes licensed under chapter 18.51 RCW~~((, nursing homes, chapter 70.41 RCW, hospitals, or));~~

(h) Private establishments licensed under chapter 71.12 RCW~~((, private establishments, clinics, or other settings where one or more health care providers practice));~~ and

~~((b))~~ (i) In reference to ((a)) sexually transmitted ((disease)) infections or blood-borne pathogens, other settings as defined in chapter 70.24 RCW.

~~((15))~~ (12) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Is military personnel providing health care within the state regardless of licensure.

~~((16))~~ (13) "Health order" or "order" means a written directive issued by the state or local health officer that requires the recipient to take specific action to remove, reduce, control, or prevent a risk to public health.

(14) "HIV testing" means conducting a laboratory test or sequence of tests to detect or monitor the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements ~~((to))~~ of WAC 246-100-207. ~~((To assure that the protection, including but not limited to, pre- and post-test counseling, and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:~~

~~((a) Monitoring previously diagnosed infection with HIV;~~

~~((b) Monitoring organ or bone marrow transplants;~~

~~((c) Monitoring chemotherapy;~~

~~((d) Medical research; or~~

~~(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.~~

~~The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting such existence.~~

~~(17))~~ (15) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the person immunodeficient.

(16) "Infectious agent" means an organism such as a virus, rickettsia, bacteria, fungus, protozoan, or helminth that is capable of producing infection or infectious disease.

~~((18))~~ (17) "Isolation" means the separation (, for the period of communicability or contamination,) of infected or contaminated persons or animals from others ((in such places and under such conditions as)) to prevent or limit the ((direct or indirect)) transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible to disease or who may spread the agent or contaminant to others.

~~((19))~~ (18) "Local health ((department)) jurisdiction" or "LHJ" means ((the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter 70.05 RCW and chapter 70.08 RCW)) a county health department under chapter 70.05 RCW, city/county health department under chapter 70.08 RCW, or health district under chapter 70.46 RCW.

~~((20))~~ (19) "Local health officer" means the ((individual)) person having been appointed under chapter 70.05 RCW as the health officer for the local health ((department)) jurisdiction, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department, or ((his or her)) their delegate appointed by the local board of health.

~~((21) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.~~

~~(22))~~ (20) "Medical treatment" or "treatment" means the treatment for curable diseases and treatment that causes a person to be unable to transmit a disease to others, based on generally accepted standards of medical and public health science.

(21) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

~~((23) "Post-test counseling" means counseling after the HIV test when results are provided and directed toward:~~

~~(a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;~~

~~(b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;~~

~~(c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;~~

~~(d) Assessing emotional impact of HIV test results; and~~

~~(e) Appropriate referral for other community support services.~~

~~(24) "Pretest counseling" means counseling provided prior to HIV testing and aimed at:~~

~~(a) Helping an individual to understand:~~

~~(i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;~~

~~(ii) The nature, purpose, and potential ramifications of HIV testing;~~

~~(iii) The significance of the results of HIV testing; and~~

~~(iv) The dangers of HIV infection; and~~
~~(b) Assessing the individual's ability to cope with the results of HIV testing.~~

~~(25))~~ (22) "Principal health care provider" means the attending physician or other health care provider licensed or certified under Title 18 RCW, recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or medical treatment or medical therapy for a patient.

~~((26))~~ (23) "Quarantine" means the limitation of freedom of movement of ~~((such well))~~ persons or domestic animals ~~((as))~~ that have been exposed to, or are suspected to have been exposed to, an infectious agent~~((r))~~:

(a) For a period of time not longer than the longest usual incubation period of the infectious agent~~((, in such manner as))~~;

(b) In a way to prevent effective contact with those not so exposed.

~~((27))~~ (24) "School" means a facility for programs of education as defined in RCW 28A.210.070 (preschool and kindergarten through grade twelve).

~~((28))~~ (25) "Sexually transmitted ~~((disease (STD)))~~ infection (STI)" or "sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic ~~((disease))~~ infection or condition which is usually transmitted through sexual contact and considered to be a threat to public health and welfare, and to be an infection for which a legitimate public interest will be served by providing for regulation and treatments, including:

- ~~(a) ((Acute pelvic inflammatory disease;~~
- ~~(b))~~ Chancroid;
- ~~((c))~~ (b) Chlamydia trachomatis infection;
- ~~((d))~~ (c) Genital ~~((and neonatal))~~ herpes simplex;
- ~~((e))~~ (d) Genital human papilloma virus infection;
- ~~((f))~~ (e) Gonorrhea;
- ~~((g))~~ (f) Granuloma inguinale;
- ~~((h))~~ (g) Hepatitis B infection;
- ~~((i))~~ (h) Human immunodeficiency virus infection (HIV) ~~((and acquired immunodeficiency syndrome (AIDS))~~);
- ~~((j))~~ (i) Lymphogranuloma venereum; and
- ~~((k) Nongonococcal urethritis (NGU);~~
- ~~(l))~~ (j) Syphilis.

~~((29))~~ (26) "Spouse" means any individual who is the marriage partner of an HIV-infected individual, or who has been the marriage partner of the HIV-infected individual within the ten-year period prior to the diagnosis of HIV-infection, and evidence exists of possible exposure to HIV.

~~((30))~~ (27) "State health officer" means the person ~~((designated))~~ appointed by the secretary ~~((of the department))~~ under RCW 43.70.020 to serve as statewide health officer, or, in the absence of such designation, the ~~((person having primary responsibility for public health matters in the state))~~ secretary.

~~((31))~~ (28) "Suspected case" or "suspected to be infected" means the local health officer, in ~~((his or her))~~ their professional judgment, reasonably believes that infection with a particular infectious agent is likely based on signs and symptoms, laboratory evidence, or contact with an infected ~~((individual))~~ person, animal, or contaminated environment.

~~((32))~~ (29) "Veterinarian" means ~~((an individual))~~ a person licensed under provisions of chapter 18.92 RCW ~~((, veterinary medicine, surgery, and dentistry and practicing animal health care))~~.

AMENDATORY SECTION (Amending WSR 15-05-014, filed 2/6/15, effective 3/9/15)

WAC 246-100-021 Responsibilities and duties—Health care providers. Every health care provider, as defined in chapter 246-100 WAC, shall:

(1) Provide adequate, understandable instruction in control measures designed to prevent the spread of disease to:

(a) Each patient with a communicable disease under his or her care; and

(b) Others as appropriate to prevent spread of disease.

(2) Cooperate with public health authorities during investigation of:

(a) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

(b) An outbreak or suspected outbreak of illness.

(3) Comply with requirements in WAC 246-100-206, 246-100-211, and chapter 246-101 WAC.

~~((3))~~ (4) Use protocols established in the *Control of Communicable Diseases Manual*, 20th edition, published by the American Public Health Association, when treating wounds caused by animal bites. A copy of this publication is available for review at the department and at each local health ~~((department))~~ jurisdiction.

(5) Conduct anonymous HIV testing consistent with the provisions of this chapter and, in accordance with chapter 246-101 WAC, report the identity of persons tested to the state or local public health officer if they have tested positive and received HIV health care or treatment services.

AMENDATORY SECTION (Amending WSR 15-05-014, filed 2/6/15, effective 3/9/15)

WAC 246-100-036 Responsibilities and duties—Local health officers. (1) The local health officer shall establish, in consultation with local health care providers, health facilities, emergency management personnel, law enforcement agencies, and any other entity ~~((he or she))~~ they deem ~~((s))~~ necessary, plans, policies, and procedures for instituting emergency measures necessary to prevent the spread of communicable disease or contamination.

(2) Local health officers shall:

(a) Notify health care providers within the local health ~~((district))~~ jurisdiction regarding requirements in this chapter;

(b) Ensure anonymous HIV testing is reasonably available;

(c) Make HIV testing, ~~((AIDS counseling, and pretest and post-test counseling,))~~ as defined in this chapter, available for volunta-

ry, mandatory, and anonymous testing (~~and counseling as required by RCW 70.24.400~~);

(d) Make information on anonymous HIV testing (~~(, AIDS counseling, and pretest and post-test counseling, as described under WAC 246-100-208 and 246-100-209,)~~) available;

(e) Use identifying information on ~~((HIV-infected individuals))~~ persons diagnosed with HIV provided according to chapter 246-101 WAC only:

(i) For purposes of contacting the ~~((HIV-positive individual))~~ person diagnosed with HIV to provide test results ~~((and post-test counseling))~~; or

(ii) To contact persons who may have experienced ~~((substantial))~~ exposure, including persons identified as sex ~~((and))~~ or injection equipment-sharing partners ~~((,))~~ and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed social and health care services ~~((and counseling))~~ and disease prevention ~~((, and~~

~~(f) Destroy documentation of referral information established in WAC 246-100-072 and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first),~~ if the identity or identifying information of the persons living with HIV is not disclosed outside of the local health jurisdiction.

(3) Local health officers shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the *Control of Communicable Diseases Manual*, 20th edition, published by the American Public Health Association, or other measures ~~((he or she))~~ they deem ~~((s))~~ necessary based on ~~((his or her))~~ their professional judgment, current standards of practice, and the best available medical and scientific information.

(4) A local health ~~((department))~~ jurisdiction should seek agreements as necessary with tribal governments ~~((,))~~ and with federal authorities ~~((or))~~, with state agencies ~~((or))~~, and institutions of higher education that empower the local health officer to conduct investigations and institute control measures in accordance with WAC 246-100-040 on tribal lands, federal enclaves and military bases, and the campuses of state institutions. State institutions include, but are not limited to, state-operated: Colleges and universities, schools, hospitals, prisons, group homes, juvenile ~~((detention centers, institutions for juvenile delinquents))~~ rehabilitation facilities, and residential habilitation centers.

AMENDATORY SECTION (Amending WSR 03-05-048, filed 2/13/03, effective 2/13/03)

WAC 246-100-070 Enforcement of local health officer orders. (1) An order issued by a local health officer in accordance with this chapter shall constitute the duly authorized application of lawful rules adopted by the ~~((state))~~ board ~~((of health))~~ and must be en-

forced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with RCW 43.20.050.

(2) Any person who (~~shall~~) violates any of the provisions of this chapter or any lawful rule adopted by the board (~~shall be~~) is deemed guilty of a misdemeanor punishable (~~as provided~~) under RCW (~~43.20.050~~) 70.05.120.

(3) Any person who (~~shall~~) fails or refuses to obey any lawful order issued by any local health officer (~~shall be~~) is deemed guilty of a misdemeanor punishable (~~as provided~~) under RCW 70.05.120.

(4) Any person who violates or fails to comply with a health order issued under RCW 70.24.024 to a person with a sexually transmitted disease who is engaging in behaviors endangering the public health is guilty of a gross misdemeanor as described in RCW 70.24.025.

AMENDATORY SECTION (Amending WSR 10-01-082, filed 12/15/09, effective 1/15/10)

WAC 246-100-072 Rules for notification of partners at risk of human immunodeficiency virus (HIV) ((infection)). (1) A local health officer or authorized representative shall:

(a) Within three working days of receipt of a report of a previously unreported case of HIV infection, attempt to contact the principal health care provider to:

(i) Seek input on the best means of conducting a case investigation including partner notification; and

(ii) If appropriate, request that the provider contact the (~~HIV-infected~~) person living with HIV as required in subsection (2) of this section.

(b) Contact the (~~HIV-infected~~) person diagnosed with HIV to:

(i) (~~Provide post-test counseling as described under WAC 246-100-209;~~

~~(ii))~~ Discuss the need to notify sex or injection equipment-sharing partners, including spouses, that they may have been exposed to (~~and infected with~~) HIV and that they should seek HIV testing; and

~~((iii))~~ (ii) Offer assistance with partner notification as appropriate.

(c) Unless the health officer or designated representative determines partner notification is not needed or the (~~HIV-infected~~) person living with HIV refuses assistance with partner notification, assist with notifying partners in accordance with the "*Recommendations for Partner Services Programs for HIV Infection, Syphilis, Gonorrhea, and Chlamydial Infection*" as published by the Centers for Disease Control and Prevention, October 2008.

(2) If the local health officer or designated representative informs the principal health care provider that (~~he or she~~) they intend(~~s~~) to conduct a partner notification case investigation, the principal health care provider shall attempt to inform the (~~HIV-infected~~) person living with HIV that the local health officer or authorized representative will contact the (~~HIV-infected~~) person living with HIV for the purpose of providing assistance with the notification of partners.

(3) A health care provider ~~((shall))~~ may not disclose the identity of ~~((an HIV-infected individual))~~ a person living with HIV or the identity of sex ~~((and))~~ or injection equipment-sharing partners, including spouses, at risk of HIV infection, except as authorized in RCW ~~((70.24.105))~~ 70.02.220 or in this section.

(4) Local health officers and authorized representatives shall ~~((+ (a-)))~~ use identifying information, according to this section, on ~~((HIV-infected individuals))~~ persons living with HIV only to:

~~((i))~~ (a) Contact the ~~((HIV-infected individual to provide post-test counseling and))~~ person living with HIV to refer, as appropriate, ~~((referral))~~ to medical care, or to contact sex ~~((and))~~ or injection equipment-sharing partners, including spouses; or

~~((ii))~~ (b) Carry out an investigation of ~~((conduct endangering))~~ behavior that endangers the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024 ~~((+ and~~

~~((b))~~ Destroy documentation of referral information established under this subsection, containing identities and identifying information on the HIV-infected individual and at-risk partners of that individual, immediately after notifying partners or within three months of the date information was received, whichever occurs first, unless such documentation is being used in an active investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024).

(5) A health care provider may consult with the local health officer or an authorized representative about ~~((an HIV-infected individual))~~ a person living with HIV and the need for notification of persons identified as sex or injection equipment-sharing partners at any time.

AMENDATORY SECTION (Amending WSR 09-22-097, filed 11/4/09, effective 12/5/09)

WAC 246-100-202 ~~((Special diseases)) Sexually transmitted ((diseases)) infections—Duties and authorities.~~ (1) Health care providers shall:

(a) Report each case of notifiable sexually transmitted ~~((disease))~~ infection as required in chapter 246-101 WAC; ~~((and))~~

(b) At each medical encounter, when providing treatment for an infectious sexually transmitted ~~((disease))~~ infection, provide ~~((instruction))~~ education, appropriate to each patient regarding:

(i) Communicability of the disease; ~~((and))~~

(ii) ~~((Requirements to refrain from acts))~~ Activities that may transmit the disease to another; ~~((and))~~

(c) Ensure completion of a prenatal serologic test for syphilis in each pregnant woman pursuant to RCW 70.24.090 including:

(i) Submitting a blood sample for syphilis to a laboratory approved to perform prenatal serologic tests for syphilis, as required in RCW 70.24.090, at the time of the first prenatal visit; ~~((and))~~

(ii) Deciding whether or not to omit the serologic test for syphilis if the test was performed elsewhere during the current pregnancy; ~~((and))~~

(d) When diagnosing or caring for a patient with gonococcal or chlamydial ophthalmia neonatorum, reporting the case to the local health officer or local health ~~((department))~~ jurisdiction in accordance with the provisions of chapter 246-101 WAC; and

(e) Instill a prophylactic ophthalmic agent into both eyes of the newborn as prophylaxis against ophthalmia neonatorum up to two hours after the delivery, whether the delivery occurred vaginally or by cesarean section. Acceptable ophthalmic prophylactic agents are application of erythromycin ~~((or tetracycline))~~ consistent with the "Sexually Transmitted Diseases Treatment Guidelines" as published by the Centers for Disease Control and Prevention, 2015. In the event the U.S. Food and Drug Administration declares a shortage of ~~((these))~~ this prophylactic ophthalmic agent~~((s))~~, health care providers may substitute alternative prophylactic ophthalmic agents recommended by the Centers for Disease Control and Prevention. If the newborn's parent(s) or legal guardian refuses this procedure, the health care provider will document the refusal in the newborn's medical record.

(2) Laboratories, health care providers, and other persons shall deny issuance of a certificate or statement implying ~~((an individual))~~ a person is free from sexually transmitted ~~((disease))~~ infection.

(3) State and local health officers or their authorized representatives ~~((shall have authority to))~~ may conduct or cause to be conducted an interview and investigation of persons infected or reasonably believed to be infected with a sexually transmitted ~~((disease.))~~ infection when:

(a) ~~((For the purpose of this section, "reasonable belief" and "reasonably believed" shall mean a health officer's belief based upon a credible report from an identifiable individual indicating another person is likely to have a sexually transmitted disease (STD) or to have been exposed to a STD;~~

~~(b-))~~ (i) They know or have reason to believe that a person in their jurisdiction has an STI and is engaging in specified behavior that endangers the public health; and

(ii) The basis for the health officer's investigation is the officer's direct medical knowledge or reliable testimony of another who is in a position to have direct knowledge of the person's behavior.

(b) In conducting the investigation, the health officer shall evaluate the allegations, as well as the reliability and credibility of any person or persons who provided information related to the specified behavior that endangers the public health.

(c) Investigations shall be conducted using procedures and measures described in WAC 246-100-036~~((+4))~~.

(4) Local health officers, health care providers, and others shall comply with the provisions in chapter 70.24 RCW, in addition to requirements in chapters 246-100 and 246-101 WAC.

(5) Any person who violates a rule adopted by the board for the control and treatment of a sexually transmitted ~~((disease))~~ infection is subject to penalty under RCW 70.24.080.

WAC 246-100-203 ((Special diseases)) Sexually transmitted ((diseases)) infections—Health officer orders. (1) A state or local health officer within ((his or her)) their jurisdiction may, in accordance with RCW 70.24.024, issue orders for a person to submit to medical examination((~~er~~)) testing, and/or counseling, ((as well as orders to)) receive medical treatment, cease and desist specific activities, ((when he or she knows or has reason to believe that a person has a sexually transmitted disease and is engaging in conduct endangering the public health.

~~(a) For purposes of this section, "reason to believe" means a health officer's belief that is based on:~~

- ~~(i) Laboratory test results confirming or suggestive of a STD; or~~
- ~~(ii) A health care provider's direct observation of clinical signs confirming an individual has or is likely to have a STD; or~~
- ~~(iii) Information obtained directly from an individual infected with a STD about the identity of his or her sexual or needle-sharing contacts when:~~

~~(A) Contact with the infected individual occurred during a period when the disease may have been infectious; and~~

~~(B) The contact was sufficient to transmit the disease; and~~

~~(C) The infected individual is, in the health officer's judgment, credible and believable.~~

~~(b) "Conduct endangering" or any combination of these after concluding an investigation and determining that a person is infected with an STI and continues to engage in specified behavior that endangers the public health despite reasonable efforts to obtain the person's voluntary cooperation.~~

(2) For the purposes of RCW 70.24.024 and this section, "behavior that endangers the public health" ((for the purposes of RCW 70.24.024 and this section,)) means((:)

((i)) for all sexually transmitted infections:

(a) Anal, oral, or vaginal intercourse ((for all sexually transmitted diseases;

((ii)) without a latex or plastic condom resulting in introduction of semen and/or vaginal fluids to mucous membranes, eyes, or an interruption of the epidermis.

(b) For HIV and Hepatitis B, the following behaviors that result in the introduction of blood, semen and/or vaginal fluids to mucous membranes, eyes, or an interruption of the epidermis:

((A)) (i) Anal, oral, or vaginal intercourse without a latex or plastic condom; and/or

((B)) (ii) Sharing of injection equipment; and/or

((C)) (iii) Knowingly donating or selling blood, blood products, body tissues, or semen((; and

((iii) Activities described in (b)(i) and (ii) of this subsection resulting in introduction of blood, semen, and/or vaginal fluids to:

(A) Mucous membranes;

(B) Eyes;

(C) Open cuts, wounds, lesions; or

(D) Interruption of epidermis)); or

(iv) Any combination of these.

~~((e))~~ (3) State and local health officers and their authorized representatives ~~((shall have authority to))~~ may issue written orders for medical examination, testing, ~~((and/or))~~ counseling, and cessation of behavior that endangers public health under ~~((chapter 70.24))~~ RCW 70.24.024, only after:

~~((i))~~ (a) All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and

~~((ii))~~ (b) They have sufficient evidence to "reasonably believe" the ~~((individual))~~ person to be affected by the order:

~~((A))~~ (i) Has a sexually transmitted ~~((disease))~~ infection; and

~~((B))~~ (ii) Is knowingly engaging in "~~((conduct endangering))~~ behavior that endangers the public health"; and

~~((iii))~~ (c) They have investigated and reasonably confirmed the ~~((existence of "conduct endangering the public health"))~~ occurrence of these behaviors by:

~~((A))~~ (i) Interviewing sources to assess their credibility and accuracy; and

~~((B))~~ (ii) Interviewing the person to be affected by the order; and

~~((iv))~~ (d) They have incorporated all information required in RCW 70.24.024 in a written order.

~~((d))~~ (4) State and local health officers and their authorized representatives ~~((shall have authority to))~~ may issue written orders for treatment under RCW ~~((70.24.022))~~ 70.24.024 only after laboratory test results or direct observation of clinical signs or assessment of clinical data by a ~~((physician))~~ health care provider confirm the ~~((individual))~~ person has, or is likely to have, a sexually transmitted ~~((disease))~~ infection.

~~((e))~~ (5) State and local health officers and their authorized representatives ~~((shall have authority to))~~ may issue written orders to cease and desist ~~((from))~~ specified ~~((activities))~~ behaviors under RCW 70.24.024 only after:

~~((i))~~ (a) They have determined the person to be affected by the order is engaging in "~~((conduct endangering))~~ behavior that endangers the public health"; and

~~((ii))~~ (b) Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a ~~((physician))~~ health care provider, confirm the ~~((individual))~~ person has, or is likely to have, a sexually transmitted ~~((disease))~~ infection; and

~~((iii))~~ (c) They have exhausted procedures described in subsection ~~((8)(a))~~ (1) of this section; and

~~((iv))~~ (d) They have enlisted, if appropriate, court enforcement of the orders described in (c) and (d) of this subsection.

~~((f))~~ (6) Written orders to cease and desist ~~((from))~~ specified ~~((activities shall be for an initial))~~ behaviors must be reasonably related to the purpose or the restriction or restrictions for a period of time not to exceed ((three)) twelve months~~((, and may be renewed by the health officer for periods of time not to exceed three months))~~ provided all requirements of RCW 70.24.024 regarding notification, confidentiality, right to a judicial hearing, and right to counsel are met ~~((again at the time of renewal))~~.

~~((2))~~ A state or local health officer within his or her jurisdiction may, in accordance with RCW 70.24.034, bring action in superior court to detain a person in a designated or approved facility when he or she knows or has reason to believe that person has a sexually

~~transmitted disease and continues to engage in behaviors that present an imminent danger to the public health.~~

~~(a) "Behaviors that present an imminent danger to public health" or "BPID" for the purposes of detention in accordance with RCW 70.24.034 and this section means the following activities, under conditions specified below, performed by an individual with a laboratory-confirmed HIV infection:~~

~~(i) Anal or vaginal intercourse without a latex condom; or
(ii) Shared use of blood-contaminated injection equipment;
(iii) Donating or selling HIV-infected blood, blood products, or semen; and~~

~~(iv) Activities described in (a)(i) and (ii) of this subsection constitute BPID only if:~~

~~(A) The infected individual received post-test counseling as described in WAC 246-100-209 prior to repeating activities; and~~

~~(B) The infected individual did not inform the persons with whom the activities occurred of his or her infectious status.~~

~~(b) State and local health officers and their authorized representatives shall have authority to seek court orders for detainment under RCW 70.24.034 only for persons infected with HIV and only after:~~

~~(i) Exhausting procedures described in subsection (1) of this section; and~~

~~(ii) Enlisting, if appropriate, court enforcement of orders to cease and desist; and~~

~~(iii) Having sufficient evidence to "reasonably believe" the person is engaging in BPID.~~

~~(c) A local health officer may notify the state health officer if he or she determines:~~

~~(i) The criteria for BPID are met by an individual; and~~

~~(ii) Such individual fails to comply with a cease and desist order affirmed or issued by a court.~~

~~(d) A local or state health officer may request the prosecuting attorney to file an action in superior court to detain an individual specified in this subsection. The requesting local or state health officer or authorized representative shall:~~

~~(i) Notify the department prior to recommending the detainment setting where the individualized counseling and education plan may be carried out consistent with subsection (9)(d), (e), and (f) of this section;~~

~~(ii) Make a recommendation to the court for placement of such individual consistent with (e), (f), and (g) of this subsection; and~~

~~(iii) Provide to the court an individualized plan for education and counseling consistent with (f) of this subsection.~~

~~(e) State board of health requirements for detainment of individuals demonstrating BPID include:~~

~~(i) Sufficient number of staff, caregivers, and/or family members to:~~

~~(A) Provide round-the-clock supervision, safety of detainee, and security; and~~

~~(B) Limit and restrict activities to prevent BPID; and~~

~~(C) Make available any medical, psychological, or nursing care when needed; and~~

~~(D) Provide access to AIDS education and counseling; and~~

~~(E) Immediately notify the local or state health officer of unauthorized absence or elopement; and~~

~~(ii) Sufficient equipment and facilities to provide:~~

~~(A) Meals and nourishment to meet nutritional needs; and~~

~~(B) A sanitary toilet and lavatory; and~~
~~(C) A bathing facility; and~~
~~(D) Bed and clean bedding appropriate to size of detainee; and~~
~~(E) A safe detention setting appropriate to chronological and developmental age of detainee; and~~
~~(F) A private sleeping room; and~~
~~(G) Prevention of sexual exploitation;~~
~~(iii) Sufficient access to services and programs directed toward cessation of BPID and providing:~~
~~(A) Linguistically, socially, culturally, and developmentally appropriate ongoing AIDS education and counseling; and~~
~~(B) Psychological and psychiatric evaluation and counseling; and~~
~~(C) Implementation of court-ordered plan for individualized counseling and education consistent with (g) of this subsection;~~
~~(iv) If required, provide access to isolation and/or restraint in accordance with restraint and seclusion rules in WAC 275-55-263 (2)(c);~~
~~(v) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.~~
~~(f) Washington state board of health standards for an individualized counseling and education plan for a detainee:~~
~~(i) Consideration of detainee's personal and environmental characteristics, culture, social group, developmental age, and language;~~
~~(ii) Identification of habitual and addictive behavior and relapse pattern;~~
~~(iii) Identification of unique risk factors and possible cross-addiction leading to behavior presenting imminent danger to public health;~~
~~(iv) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;~~
~~(v) Provision of information about acquisition and transmission of HIV infection;~~
~~(vi) Teaching and training of individual coping skills to prevent relapse to BPID;~~
~~(vii) Specific counseling for chemical dependency, if required;~~
~~(viii) Identification of and assistance with access to community resources, including social services and self-help groups appropriate to provide ongoing support and maintenance of behavior change; and~~
~~(ix) Designation of a person primarily responsible for counseling and/or education who:~~
~~(A) Completed pretest and post-test counselor training approved by the office on AIDS; and~~
~~(B) Received training, as approved by the office on AIDS, focused on facilitating behavior change related to preventing BPID; and~~
~~(C) Has a postgraduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and~~
~~(D) Completed at least one year clinical experience after postgraduate education with a primary focus on individualized behavior change; and~~
~~(E) Is a certified counselor under chapter 18.19 RCW;~~
~~(x) Designation and provision of a qualified counselor under WAC 275-19-145 when the detainee is assessed to have a drug or alcohol problem.~~
~~(g) The state board of health designates the following settings appropriate for detainment provided a setting meets requirements in (e)(i), (ii), (iii), (iv), and (v) of this subsection:~~

- ~~(i) Homes, care facilities, or treatment institutions operated or contracted by the department;~~
- ~~(ii) Private homes, as recommended by the local or state health officer;~~
- ~~(iii) Assisted living facilities licensed under chapter 18.20 RCW;~~
- ~~(iv) Nursing homes licensed under chapter 18.51 RCW;~~
- ~~(v) Facilities licensed under chapter 71.12 RCW, including:~~
 - ~~(A) Psychiatric hospitals, per chapter 246-322 WAC;~~
 - ~~(B) Alcoholism treatment centers if certified for substance use under chapter 275-19 WAC;~~
 - ~~(C) Adult residential rehabilitation centers, per chapter 246-325 WAC;~~
 - ~~(D) Private adult treatment homes, per chapter 246-325 WAC;~~
 - ~~(E) Residential treatment facilities for psychiatrically impaired children and youth, per chapter 246-323 WAC;~~
- ~~(vi) A hospital licensed under chapter 70.41 RCW.)~~

NEW SECTION

WAC 246-100-2031 Sexually transmitted infections—Orders and standards for detainment. (1) When the requirements in RCW 70.24.024 have been exhausted, a state or local health officer within their jurisdiction may, in accordance with RCW 70.24.034, bring an action in superior court to detain a person, who continues to engage in behaviors that present an imminent danger to the public health, in a designated facility.

(2) For the purposes of detention in accordance with RCW 70.24.034 and this section, "behaviors that present an imminent danger to public health" or "BPID" means the following activities, under conditions specified below, performed by a person with a laboratory-confirmed HIV infection:

- (a) Anal or vaginal intercourse without a latex or plastic condom; or
- (b) Shared use of blood-contaminated injection equipment;
- (c) Donating or selling blood, blood products, or semen; and
- (d) Activities described in (a) and (b) of this subsection constitute BPID only if the person with a laboratory confirmed HIV infection did not inform the persons with whom the activities occurred of their infectious status.

(3) State and local health officers and their authorized representatives may seek court orders for detainment under RCW 70.24.034 only for persons with a laboratory confirmed HIV infection and only after:

- (a) Laboratory test results confirming or suggestive of an STI; or
- (b) A health care provider's direct observation of clinical signs confirming a person has or is likely to have an STI;
- (c) Having sufficient medical information that the person has an STI which may include (a) and (b) of this subsection. Leaving it as "may" because of the "reason to believe" element.

(4) A local health officer may notify the state health officer if they determine:

- (a) The criteria for BPID are met by a person; and
- (b) The local health officer obtained a superior court order requiring the person to comply with a cease and desist order and the person failed to comply.

(5) A state or local health officer may request the prosecuting attorney to file an action in superior court to detain a person specified in this subsection. The requesting state or local health officer or authorized representative shall:

- (a) Notify the department prior to recommending the detainment setting where an individualized counseling and education plan may be carried out consistent with subsections (6), (7), and (8) of this section;

- (b) Make a recommendation to the court for placement of the person consistent with subsections (6), (7), and (8) of this section; and

- (c) Provide to the court an individualized plan for education and counseling consistent with subsection (7) of this section.

(6) Requirements for detainment of persons demonstrating BPID include:

- (a) Sufficient number of staff, caregivers, and/or family members to:

- (i) Provide round-the-clock supervision, safety of detainee, and security;

- (ii) Limit and restrict activities to prevent BPID;

- (iii) Make available any medical, psychological, or nursing care when needed;

- (iv) Provide access to education and counseling; and

- (v) Immediately notify the state or local health officer of unauthorized absence or elopement.

- (b) Sufficient equipment and facilities to provide:

- (i) Meals and nourishment to meet nutritional and religious or cultural needs;

- (ii) A sanitary toilet and lavatory;

- (iii) A bathing facility;

- (iv) Bed and clean bedding appropriate to size of detainee;

- (v) A safe detention setting appropriate to chronological and developmental age of detainee; and

- (vi) A private sleeping room.

- (c) Sufficient access to services and programs directed toward cessation of BPID and providing:

- (i) Psychological and psychiatric evaluation and counseling; and

- (ii) Implementation of court-ordered plan for individualized counseling and education consistent with subsection (7) of this section.

- (d) If required, provide access to facilities equipped to provide isolation and/or restraint in accordance with their applicable rules;

- (e) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.

(7) Standards for an individualized counseling and education plan for a detainee include:

- (a) Alignment with the detainee's personal and environmental characteristics, culture, social group, developmental age, and language;

- (b) Identification of habitual and addictive behavior and relapse pattern;

- (c) Identification of unique risk factors and possible cross-addiction leading to BPID;

- (d) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;
 - (e) Provision of information about acquisition and transmission of HIV;
 - (f) Teaching and training of individual coping skills to prevent relapse to BPID;
 - (g) Specific counseling for substance use disorder, if required;
 - (h) Identification of and assistance with access to community resources, including social services and self-help groups appropriate to provide ongoing support and maintenance of behavior change; and
 - (i) Designation of a person primarily responsible for counseling and/or education who:
 - (i) Has a postgraduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and
 - (ii) Completed at least one year of clinical experience after postgraduate education with a primary focus on individualized behavior change; and
 - (iii) Is a certified counselor under chapter 18.19 RCW;
 - (j) Designation and provision of a qualified counselor under chapter 246-811 WAC when the detainee is assessed to have substance use disorder.
- (8) The following settings are appropriate for detainment provided a setting meets requirements in subsection (6)(a) through (e) of this section:
- (a) Homes, care facilities, or treatment institutions operated or contracted by the department;
 - (b) Private homes, as recommended by the state or local health officer;
 - (c) Assisted living facilities licensed under chapter 18.20 RCW;
 - (d) Nursing homes licensed under chapter 18.51 RCW;
 - (e) Facilities licensed under chapter 71.12 RCW that provide behavioral health services, including:
 - (i) Psychiatric hospitals, under chapter 246-322 WAC;
 - (ii) Chemical dependency hospitals licensed under chapter 246-324 WAC;
 - (iii) Residential treatment facilities under chapter 246-337 WAC;
 - (f) A hospital licensed under chapter 70.41 RCW.

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-204 ((~~Special diseases—Human immunodeficiency virus (HIV)—~~)Absence of HIV or hepatitis C as an occupational qualification. For the purpose of RCW 49.60.172 concerning the absence of HIV or hepatitis C infection as a bona fide occupational qualification only, "significant risk" means a job qualification which requires person-to-person contact likely to result in direct introduction of blood into the eye(~~(, an open cut or wound, or other)~~) or interruption of the epidermis, when:

- (1) No adequate barrier protection is practical; and
- (2) Determined only on case-by-case basis consistent with RCW 49.60.180.

WAC 246-100-205 (~~(Special diseases HIV Testing and counseling following occupational exposure.)~~) Blood-borne pathogen exposure—Occupation settings other than jail and corrections settings. A person who has experienced (~~(a substantial)~~) an exposure to another person's bodily fluids in a manner that presents a possible risk of transmission of (~~(HIV)~~) blood-borne pathogens, and who is exposed while engaged in a category of employment determined to be at risk of substantial exposure to (~~(HIV)~~) blood-borne pathogens, may ask a state or local health officer to order (~~(pretest counseling, HIV testing, and post-test counseling)~~) testing for blood-borne pathogens of the person who was the source of the bodily fluids in accordance with RCW 70.24.340.

(1) Substantial exposure that presents a possible risk of transmission (~~(shall be)~~), and is therefore substantial, is limited to:

(a) A physical assault upon the exposed person involving blood (~~(or)~~), semen, or vaginal fluid;

(b) Intentional, unauthorized, nonconsensual use of needles or sharp implements to inject or mutilate the exposed person; or

(c) An accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen, or vaginal fluids.

(2) The alleged exposure must have occurred on the job while the (~~(individual)~~) person was employed or acting as an authorized volunteer in one of the following employment categories that are at risk of substantial exposure to (~~(HIV)~~) blood-borne pathogens:

(a) Law enforcement officer;

(b) Firefighter;

(c) Health care provider;

(d) Staff of health care facilities;

(e) Funeral director; (~~(or)~~)

(f) Embalmer; or

(g) Persons licensed to perform body art, body piercing, and tattooing under chapter 18.300 RCW.

(3) The state or local health officer shall:

(a) Determine (~~(that)~~) whether the alleged exposure meets the criteria established in this section for substantial exposure that presents a possible risk of transmission(~~;~~ and

~~(b) Ensure that pretest counseling of the individual to be tested, or a legal representative, occurs; and~~

~~(c))~~, and, if criteria are met, notify and arrange for testing of the (~~(individual)~~) person who is the source of the exposure (~~(to occur within seven days of the request from the person exposed)~~) in accordance with RCW 70.24.340; and

(~~(d)~~) (b) Ensure that records (~~(on HIV)~~) related to blood-borne pathogen testing ordered by ((a)) the health officer are maintained only by the ordering health officer or authorized representative.

(4) The health officer, as a precondition for ordering counseling and testing of the person who was the source of the (~~(bodily fluids)~~) exposure, may require that the exposed individual agree to be tested for (~~(HIV if such)~~) blood-borne pathogens if the health officer determines testing is (~~(determined)~~) appropriate (~~(by the health officer)~~).

(5) This section does not apply to the department of corrections or to inmates in its custody or subject to its jurisdiction.

WAC 246-100-206 (~~(Special diseases HIV Testing and counseling of jail detainees.)~~) **Blood-borne pathogen exposure—Local jail facilities.** Jail administrators, with the approval of the local public health officer, may order (~~(pretest counseling, HIV testing and post-test counseling)~~) blood-borne pathogen testing of a jail detainee in accordance with RCW 70.24.360, (~~(provided that)~~) if the local (~~(public)~~) health officer determines that the detainee's (~~(actual or threatened behavior presents a possible risk to the staff, general public, or other persons.~~

~~(1) Actual behaviors present a possible risk if they result in "exposure presenting a possible risk" and involve one of the following actions:~~

~~(a) Anal, oral, or vaginal intercourse excluding conjugal visits;~~
or

~~(b) Physical assault; or~~

~~(c) Sharing of injection equipment or sharp implements; or~~

~~(d) Throwing or smearing of blood, semen, or vaginal fluids; or~~

~~(2) Threatened behaviors present a "possible risk" if:~~

~~(a) The threatening individual states he or she is infected with HIV; and~~

~~(b) The threatened behavior is listed in subsection (1) (a), (b), (c), or (d) of this section; and~~

~~(c) The threatened behavior could result in "exposure presenting a possible risk."~~

~~(3)) behavior exposed the staff, other detainees, the general public, or other persons and the exposure presents a possible risk of transmitting a blood-borne pathogen.~~

(1) For purpose((s of subsections (1) and (2)) of this section, "exposure presenting possible risk" means one or more of the activities identified in Column A of Table 1 resulting in one or more of the (following:

~~(a) Introduction of blood, semen, or vaginal fluids into:~~

~~(i) A body orifice or a mucous membrane;~~

~~(ii) The eye; or~~

~~(iii) An open cut, wound, lesion, or other interruption of the epidermis.~~

~~(b) A needle puncture or penetrating wound resulting in exposure to blood, semen, and/or vaginal fluids.~~

~~(4)) outcomes identified in Column B of Table 1.~~

TABLE 1. "Exposure Presenting Possible Risk" - One or more of the activities in Column A resulting in one or more of the outcomes in Column B

<u>COLUMN A. Activities</u>	<u>COLUMN B. Outcomes</u>
<ul style="list-style-type: none"> • Anal, oral, or vaginal intercourse without a latex or plastic condom excluding conjugal visits; or • Physical assault; or • Sharing of injection equipment or sharp implements; or • Throwing or smearing of blood, semen, or vaginal fluid 	<ul style="list-style-type: none"> • Introduction of blood, semen, or vaginal fluids, or some combination of these, into: <ul style="list-style-type: none"> - A mucous membrane; - The eye; or - An interruption of the epidermis; or • A needle puncture or penetrating wound resulting in exposure to blood, semen, or vaginal fluids, or some combination of these

(2) Jail administrators may order (~~pretest counseling, post-test counseling, and HIV~~) blood-borne pathogen testing only under the following conditions:

(a) The jail administrator documents and reports to the local health officer, within seven days after the incident, any incident (~~perceived to be actual or threatened "behaviors"~~) resulting in "exposure presenting possible risk"; and

(b) The local health officer:

(i) Determines the documented behavior or behaviors meet the criteria established in this section for behaviors presenting a "possible risk"; and

(ii) Interviews the detained (~~individual~~) person to evaluate the factual basis for alleged (~~actual or threatened~~) behavior; and

(iii) Makes a fact determination, based upon the documented behavior, the interview with the detained (~~individual~~) person, and/or independent investigation, that sufficient factual evidence exists to support the allegation (~~of actual or threatened "behaviors presenting possible risk"~~) that the detainee's behavior resulted in exposure presenting possible risk of transmitting a blood-borne pathogen; and

(iv) Arranges for testing of the (~~individual~~) person who is the source of the (~~behavior~~) exposure to occur within seven days of the request from the jail administrator; and

(v) Reviews with the detained (~~individual~~) person who is the source of the (~~behavior~~) exposure the documentation of the (~~actual or threatened~~) behavior to try to assure understanding of the basis for (~~HIV~~) blood-borne pathogen testing; and

(vi) Provides written approval of the jail administrator's order prior to (~~HIV~~) blood-borne pathogen testing.

(c) The jail administrator maintains (~~HIV~~) blood-borne pathogen test results and identity of the tested (~~individual~~) person as a confidential, nondisclosable record, (~~as provided in RCW 70.24.105~~) consistent with chapter 70.02 RCW.

NEW SECTION

WAC 246-100-2061 Blood-borne pathogen exposure—Department of corrections facilities. (1) For purposes of RCW 70.24.370, an exposure that presents a "possible risk of transmission of a blood-borne pathogen" means one or more of the activities identified in Column A of Table 2 resulting in one or more of the outcomes identified in Column B of Table 2.

TABLE 2. "Possible Risk of Transmission of a Blood-borne Pathogen" - One or more of the activities in Column A resulting in one or more of the outcomes in Column B

COLUMN A. Activities	COLUMN B. Outcomes
<ul style="list-style-type: none"> • Anal, oral, or vaginal intercourse without a latex or plastic condom excluding conjugal visits; or • Physical assault; or • Sharing of injection equipment or sharp implements; or • Throwing or smearing of blood, semen, or vaginal fluid 	<ul style="list-style-type: none"> • Introduction of blood, semen, or vaginal fluids, or some combination of these, into: <ul style="list-style-type: none"> - A mucous membrane; - The eye; or - An interruption of the epidermis; or • A needle puncture or penetrating wound resulting in exposure to blood, semen, or vaginal fluids, or some combination of these

(2) The chief medical officer of the department of corrections may order blood-borne pathogen testing for a detainee in accordance with RCW 70.24.370, if the chief medical officer or their designee determines that the inmate's behavior exposed the staff, general public, or other inmates and that exposure presents a possible risk of transmitting a blood-borne pathogen as defined in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 18-23-056, filed 11/15/18, effective 12/16/18)

WAC 246-100-207 (~~(Human immunodeficiency virus (HIV))~~) Blood-borne pathogen testing—Ordering—Laboratory screening—Interpretation—Reporting.

~~(1) Except for persons ((conducting seroprevalent studies under chapter 70.24 RCW, or)) ordering or prescribing ((an HIV)) a blood-borne pathogen test for another ((individual)) person under subsections ((4) and (5)) (3) and (4) of this section ((or under WAC 246-100-208(1))), any person ordering or prescribing ((an HIV)) a blood-borne pathogen test for another ((individual, shall,)) person if the ((HIV)) test is positive for or suggestive of ((HIV)) blood-borne pathogen infection, ((provide the name of the individual and locating information to the local health officer for follow-up and post-test counseling as required by WAC 246-100-209)) shall follow the provisions of chapter 246-101 WAC.~~

(2) The local and state health officer or authorized representative shall periodically make efforts to inform providers in their respective jurisdiction about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings."

~~(3) ((Health care providers may obtain a sample brochure about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings" by contacting the department's HIV prevention program at P.O. Box 47840, Olympia, WA 98504.~~

~~(4)) Any person authorized to order or prescribe an HIV test for another ((individual)) person may offer anonymous HIV testing without restriction.~~

~~((5)) (4) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:~~

(a) Explain that donations are tested to prevent contamination of the blood supply, tissue, or organ bank donations;

(b) At the time of notification regarding a positive ((HIV)) blood-borne pathogen test, provide or ensure at least one individual counseling session; and

(c) Inform the ((individual)) person that the name of the ((individual)) person testing positive for ((HIV infection)) a blood-borne pathogen will be confidentially reported to the state or local health officer.

~~((6)) (5) Persons subject to regulation under Title 48 RCW and requesting an insured, subscriber, or potential insured or subscriber to furnish the results of ((an HIV)) a blood-borne pathogen test for underwriting purposes, as a condition for obtaining or renewing cover-~~

age under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before obtaining a specimen to perform ~~((an HIV))~~ a blood-borne pathogen test, provide written information to the ~~((individual))~~ person tested explaining ~~((:~~

~~(i) What an HIV test is;~~

~~(ii) Behaviors placing a person at risk for HIV infection;~~

~~(iii))~~ which blood-borne pathogen test is being administered and that the purpose of ((HIV)) blood-borne pathogen testing in this setting is to determine eligibility for coverage;

~~((iv) The potential risks of HIV testing; and~~

~~(v) Where to obtain HIV pretest counseling.)~~

(b) Obtain informed specific written consent for ~~((an HIV))~~ a blood-borne pathogen test or tests. The written informed consent ~~((shall))~~ must include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) That the name of the ~~((individual))~~ person testing positive for ~~((HIV infection))~~ a blood-borne pathogen will be confidentially reported to the state or local health officer ~~((; and~~

~~(iii) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session)).~~

(c) Establish procedures to inform an applicant of the following:

(i) ~~((Post-test counseling specified under WAC 246-100-209 is required if an HIV test is positive or indeterminate;~~

~~(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;~~

~~(iii))~~ The applicant ~~((is required to))~~ may designate a health care provider or health care agency to whom ~~((positive or indeterminate HIV))~~ test results indicative of infection with a blood-borne pathogen are to be provided for interpretation ~~((and post-test counseling)); and~~

~~((iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the insurer, health care service contractor, or health maintenance organization shall provide the test results to the state or local health department for interpretation and post-test counseling.~~

~~(7))~~ (ii) Test results indicative of infection are sent directly to the applicant.

(6) Laboratories and other places where ((HIV)) blood-borne pathogen testing is performed must demonstrate compliance with all of the requirements in the medical test site rules, chapter 246-338 WAC.

~~((8) The department laboratory quality assurance section shall accept substitutions for enzyme immunoassay (EIA) screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.~~

~~(9))~~ (7) Persons informing a tested ((individual)) person of positive laboratory test results indicating ((HIV)) blood-borne pathogen infection shall do so only when:

(a) The test or sequence of tests has been approved by the FDA or the Federal Centers for Disease Control and Prevention as a confirmed positive test result; and

(b) ~~((Such))~~ The information consists of relevant facts communicated in such a way that it will be readily understood by the recipi-

ent and is linguistically, socially, culturally, and developmentally appropriate.

((10)) (8) Persons may inform a tested ((individual)) person of the unconfirmed reactive results of an FDA-approved rapid ((HIV)) blood-borne pathogen test provided the test result is interpreted as preliminarily positive ((for HIV antibodies)), and the tested ((individual)) person is informed that:

(a) Further testing is necessary to confirm the reactive screening test result;

(b) The meaning of reactive screening test result is explained in simple terms, avoiding technical jargon;

(c) The importance of confirmatory testing is emphasized and a return visit for confirmatory test results is scheduled; and

(d) The importance of taking precautions to prevent transmitting infection to others while awaiting results of confirmatory testing is stressed.

AMENDATORY SECTION (Amending WSR 91-02-051, filed 12/27/90, effective 1/31/91)

WAC 246-100-211 ((Special diseases)) Tuberculosis. (1) Health care providers diagnosing or caring for a person with tuberculosis, whether pulmonary or nonpulmonary, shall:

(a) Report the case to the local health officer or local health ((department)) jurisdiction in accordance with the provisions of this chapter, and

(b) Report patient status to the local health officer every three months or as requested.

(2) The local health officer or local health ((department)) jurisdiction shall:

(a) Have primary responsibility for control of tuberculosis within the designated jurisdiction;

(b) Maintain a tuberculosis control program including:

(i) Prophylaxis,

(ii) Treatment,

(iii) Surveillance,

(iv) Case finding,

(v) Contact tracing, and

(vi) Other aspects of epidemiologic investigation;

(c) Maintain a tuberculosis register of all persons with tuberculosis, whether new or recurrent, within the local jurisdiction including information about:

(i) Identification of patient,

(ii) Clinical condition,

(iii) Epidemiology of disease,

(iv) Frequency of examinations;

(d) Impose isolation of a person with tuberculosis in an infectious stage if that person does not observe precautions to prevent the spread of the infection;

(e) Designate the place of isolation when imposed;

(f) Release the person from isolation when appropriate;

(g) Maintain and provide outpatient tuberculosis diagnostic and treatment services as necessary, including public health nursing services and physician consultation; and

(h) Submit reports of all cases to the department in accordance with the provisions of this chapter.

(3) When a person with tuberculosis requires hospitalization,

(a) Hospital admission shall occur in accordance with procedures arranged by the local health officer and the medical director or administrator of the hospital, and

(b) The principal health care provider shall:

(i) Maintain responsibility for deciding date of discharge, and

(ii) Notify the local health officer of intended discharge in order to assure appropriate outpatient arrangements.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-100-208	Counseling standard—HIV counseling.
WAC 246-100-209	Counseling standards—Human immunodeficiency virus (HIV) pretest counseling—HIV post-test counseling.