

WASHINGTON STATE BOARD OF HEALTH

Date: August 11, 2021

To: Washington State Board of Health Members

From: Stephen Kutz, BSN, MPH

Subject: Chapter 246-101 WAC, Notifiable Conditions

Background and Summary:

The State Board of Health (Board) has the authority under RCW 43.20.050 to adopt rules for the prevention and control of infectious and noninfectious diseases. The purpose of Chapter 246-101 WAC, Notifiable Conditions, is to provide critical information to public health authorities to aid them in protecting and improving public health through prevention and control of infectious and noninfectious conditions as required under law.

Emergency Rule

The [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#), signed into law on March 27, 2020, includes a requirement for every laboratory that performs or analyzes a test intended to detect or diagnose a possible case of COVID-19 to report the results to the U.S. Department of Health and Human Services (HHS) in a manner prescribed by the HHS Secretary until the end of the public health emergency.

HHS released laboratory data reporting [guidance](#) for COVID-19 that specifies standards for reporting laboratory testing data, including test results, relevant demographic details (e.g., patient's age, race, ethnicity, sex), and additional information to improve the public health response to COVID-19. These data must be collected and reported to state or local public health departments using existing reporting channels in accordance with state law or policies.

In September 2020, the Centers for Medicare and Medicaid Services (CMS) published an interim final rule in the [Federal Register Volume 85, Number 171](#) stipulating that all laboratories conducting SARS-CoV-2 testing and reporting patient-specific results, including hospital laboratories, nursing homes, and other facilities conducting testing for COVID-19, who fail to report information required under the CARES Act will be subject to monetary penalties.

The Board previously adopted emergency rules under WAC 246-101-017 to designate COVID-19 as a notifiable condition and require reporting of essential COVID-19 testing and patient demographic data aligned with the CARES Act. To ensure consistency in reporting between regulated entities under chapter 246-101 WAC, COVID-19 reporting was required from health care providers, health care facilities, laboratories, and local

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health jurisdictions. Emergency rules were adopted on July 30, 2020; November 9, 2020; March 10, 2021; and June 9, 2021.

Since adoption of the most recent emergency rule in June, the Board has been asked by the Department of Health (Department) to adjust the reporting timeframe in which local health jurisdictions must notify the Department of cases of COVID-19, submit investigation reports upon completion, and reassign cases to the Department. The current emergency rule requires immediate notice, and the proposed revision requires notice within one business day.

These proposed revisions better reflect the current capacity of the Department to receive these data and local health jurisdictions to transmit these data while also working to protect public health in other pandemic-related activity as well as non-pandemic-related activity. Proposed adjustments to reporting timelines for local health jurisdictions will not impact compliance with the CARES Act or CMS interim rules.

I recommend the Board adopt a fifth emergency rule to replace the current emergency rule to extend COVID-19 reporting requirements for another 120 days and update the reporting timelines for local health jurisdictions to better align with the public health agencies' capacity for reporting. The immediate adoption of this rule is necessary for the preservation of the public health, safety, and general welfare of the State of Washington.

Permanent Rulemaking

Per the requirements of the Administrative Procedures Act, RCW 34.05.350, the Board has taken steps to integrate requirements of the emergency rules into permanent rule.

The Board adopted permanent revisions to chapter 246-101 WAC at their March 10, 2021 meeting. Among these revisions, COVID-19 is designated as a notifiable condition, and many of the HHS data components are required reporting for health care providers, health care facilities, laboratories, and local health jurisdictions. These revisions go into effect January 31, 2022.

On July 23, 2021, the Board filed a CR-101, Preproposal Statement of Inquiry, alerting interested parties that the Board will consider further amending chapter 246-101 WAC to address any remaining federally required data components for reporting COVID-19, support statewide COVID-19 disease surveillance, and allow the governmental public health system to identify appropriate public health interventions through the end of the COVID-19 pandemic and beyond.

For example, the Board may consider clarifying requirements for entities conducting point of care testing or rapid screening testing; allowing local health jurisdictions to forward cases to the Department for data entry; allowing certain waivers by a local health officer; and updating reporting timeframes.

In addition, the Board may also consider revisions to clarify the instances in which health care providers and health care facilities must report a notifiable condition to a

local health jurisdiction or the Department. The Board may consider other editorial revisions to the chapter as necessary.

I have invited Kaitlyn Donahoe, Board Staff, to update the Board and provide further information on the emergency rule and permanent rulemaking as it relates to the Notifiable Conditions chapter.

Recommended Board Actions:

The Board may wish to consider, amend if necessary, and adopt the following motions:

The Board adopts a fifth emergency rule to continue the designation of COVID-19 as a notifiable condition, require reporting of essential testing and demographic data to improve the public health response to COVID-19, and lengthen reporting timelines for local health jurisdictions. The Board directs staff to file a new CR-103E to replace the current emergency rule, filed as WSR 21-16-014, which will become effective immediately upon filing with the code reviser.

Staff

Kaitlyn Donahoe

To request this document in an alternate format or a different language, please contact Kelie Kahler, Washington State Board of Health Communication Manager, at 360-236-4102 or by email at kelie.kahler@sboh.wa.gov. TTY users can dial 711.

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