



**Date:** November 9, 2020

**To:** Washington State Board of Health Members

**From:** Stephen Kutz, BSN, MPH

**Subject:** Update – Notifiable Conditions Rule Making – Chapter 246-101 WAC

**Background and Summary:**

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 RCW 43.20.050, 70.104.055, and 43.70.545. The State Board of Health (Board) and Washington State Department of Health (Department) filed a CR-101 in April 2017. Initial work with stakeholders indicated a need to expand the scope of the rulemaking. The original CR-101 was withdrawn and a new CR-101 was filed on March 18, 2018.

The CR-102, Proposed Rule, was filed on March 3, 2020 as WSR 20-06-061. Board staff filed a continuance on March 18, 2020 as WSR 20-07-108 for the purposes of updating meeting information.

The proposed changes include adding notification and specimen submission requirements for “new conditions” and conditions currently identified as “other rare diseases of public health significance”. The proposed rule also includes changes that update and clarify notification and specimen submission requirements for certain existing conditions, clarify and improve requirements for suspected cases, revise the reporting requirements for veterinarians and the Department of Agriculture, update statutory references in the rules, and update references to the 2006 Security and Confidentiality Guidelines developed by the Centers for Disease Control and Prevention to the most recent version.

The Board held a public hearing on April 8, 2020. The Board determined it would continue its consideration of the proposed rule until its August meeting in recognition of interested parties’ limited ability to review and comment on the proposed changes as a result of the Coronavirus Disease 2019 (COVID-19) pandemic. As a result of public comments received, the Board and Department have made additional changes to the proposed rule. Department staff filed a Supplemental CR-102, Proposed Rule, on June 16, 2020 as WSR 20-13-062 to announce the rules hearing continuance to August of 2020 as well as adjustments to the original proposal.

At a special meeting of the Board on July 30, the Board adopted an emergency rule to explicitly designate Novel Coronavirus (SARS-CoV-2), also known as COVID-19, as a notifiable condition and require laboratories, health care providers, health care facilities, and local health jurisdictions to report certain data components in accordance with the

Coronavirus Aid, Relief, and Economic Security (CARES) Act and subsequent U.S. Department of Health and Human Services (HHS) guidance. Required reportable data components for cases of COVID-19 go above and beyond the proposed changes Chapter 246-101 WAC. Of note, the emergency rule specifies how the patient's race and ethnicity should be reported and requires reporting of the patient's primary language. The emergency rule is in effect until November 28, 2020 and may be extended by the Board to fulfill federal reporting requirements through the duration of this public health emergency.

After adoption of the emergency rule, staff were made aware of unforeseen staffing changes at the Department as well as system limitations that prevented full implementation of the emergency rule requirements. Staff learned that the collection of data components outside of what is federally required (as described in the June 4, 2020 HHS guidance), including detailed race, ethnicity, and language data, is not feasible at this time.

The Board held a public hearing on the supplemental proposal for the full Notifiable Conditions rule on April 12, 2020. The Board received comment from King County with a request to require race, ethnicity, primary language, gender identity, sexual orientation, and disability status data reporting for all notifiable conditions. The Board elected to continue its consideration of the supplemental proposal for the purpose of gathering information to evaluate the feasibility of incorporating additional demographic reporting requirements into the proposed rule. Staff were directed to work with stakeholders and subject matter experts to develop a recommendation for the Board's consideration.

I have invited Kaitlyn Donahoe, Policy Advisor for the Board, and LinhPhung Huynh, Policy Advisor for the Department, to provide their recommendation on the next steps for the Notifiable Conditions rulemaking project.

#### Recommended Board Action:

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

The Board directs staff to continue working with subject matter and community experts, local health jurisdictions, and the regulated community in order to help staff develop language to include disaggregated race, ethnicity, and language as reportable data components in the Notifiable Conditions rule. The Board directs staff to withdraw the Supplemental CR-102 filed as WSR 20-13-062 in anticipation of filing a new CR-102 to incorporate the additional reportable data components following Board review of the proposed revisions.

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](mailto:kelie.kahler@sboh.wa.gov). TTY users can dial 711.