

WASHINGTON STATE BOARD OF HEALTH

Date: November 10, 2021

To: Washington State Board of Health Members

From: Dr. Bob Lutz, Board Member

Subject: Rules Hearing – Communicable and Certain Other Diseases – Chapter 246-100 WAC

Background and Summary:

Chapter 246-100 WAC, Communicable and Certain Other Diseases establishes rules for the prevention and control of infectious and noninfectious disease under the authority provided in RCW 43.20.050. In 2020, the Legislature passed Engrossed Substitute House Bill (ESHB) 1551, Modernizing the control of certain communicable diseases, which provides the Board with new rulemaking duties under chapter 70.24 RCW.

ESHB 1551 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 new law took effect June 11, 2020. The Board initiated rulemaking in July 2020 to assure consistency with the new law and align chapters 246-100 WAC, Communicable and Certain Other Diseases, as well as chapter 246-101 WAC, Notifiable Conditions.

The Board previously adopted amendments to the Notifiable Conditions chapter at its March 2021 meeting. Amendments include minor editorial revisions consistent with the changes in ESHB 1551.

The scope of the revisions in the Communicable Disease chapter include:

- Editorial revisions throughout the chapter to remove gendered language (e.g., his or hers), use people-first language (e.g., people living with HIV), and provide clarity.
- Adding and removing definitions consistent with ESHB 1551.
- Removing references to HIV/AIDS counseling, including pre- and post-test counseling, and training consistent with ESHB 1551.
- Updating references to law (RCW) and rule (WAC).
- Clarifying provisions related to the use of identifying information of persons living with HIV.
- Revising the effective length of written health orders from three to 12 months consistent with ESHB 1551.
- Replacing certain references to HIV with blood-borne pathogen.

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- Establishing and clarifying the criteria for what constitutes a substantial exposure and possible risk of transmission of a blood-borne pathogen in occupational settings, local jail facilities, and Washington State Department of Corrections facilities.

Board staff consulted local health jurisdictions, the Washington State Department of Corrections, Washington State Labor & Industries, and Department of Health subject matter experts, as well as community and advocacy groups in the development of proposed revisions. Board staff distributed two informal drafts for comment and held a Listen and Learn session to solicit feedback. A CR-102, Proposed Rules, was filed on October 5, 2021, opening the formal public comment period which ended on October 28, 2021.

I have invited Sam Pskowski, Cait Lang-Perez, Board Staff, and LinhPhụng Huỳnh, Department of Health Staff, to provide an overview of the proposed rule and summary of public comments received. We will then hold a rules hearing on the proposed rule.

Recommended Board Actions

The Board may wish to consider, amend if necessary, and adopt one of the following motions for the proposed rules.

The Board adopts the proposed revisions to chapter 246-100 WAC, Communicable and Certain Other Diseases, as published in WSR 21-20-127, with the revisions agreed upon at today's meeting, and directs staff to file a CR-103, Order of Adoption and establish an effective date.

Or

The Board, based on today's discussion, elects to continue its decision whether to adopt the proposed rule to the Board's next regularly scheduled meeting in January 2022 for the purpose of clarifying, in response to public comment received, language related to Board authority in chapter 70.24 RCW to define certain exposures and behaviors. The Board directs staff to work with interested parties and subject matter experts to develop a recommendation for the Board's consideration at its January meeting.

Staff

Samantha Pskowski
Caitlin Lang-Perez

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