



March 8, 2022

To Whom It May Concern,

The Washington State Board of Health (Board) adopted amendments to chapter 246-100 WAC, Communicable and Certain Other Diseases at their January 12, 2022 meeting. Chapter 246-100 WAC outlines requirements for the prevention and control of infectious and noninfectious diseases.

Purpose of Rulemaking

The purpose of rulemaking within chapter 246-100 WAC is to implement and enforce chapter 70.24 RCW as required by Engrossed Substitute House Bill (ESHB) 1551, passed during the 2020 legislative session. ESHB 1551 directed the Board to adopt rules which:

- Establish reporting requirements for sexually transmitted diseases;
- Establish procedures for investigations of sexually transmitted disease under RCW 70.24.024;
- Specify, for purposes of RCW 70.24.024, behavior that endangers the public health, based upon generally accepted standards of medical and public health sciences;
- Define, for the purposes of RCW 70.24.120, specimens that can be obtained and tests that can be administered for sexually transmitted diseases, blood-borne pathogens, and other infections;
- Determine, for the purposes of RCW 70.24.340, categories of employment that are at risk of substantial exposure to a blood-borne pathogen; and
- Define, for purposes of RCW 70.24.340, 70.24.360, and 70.24.370, what constitutes an exposure that presents a possible risk of transmission of a blood-borne pathogen in occupational settings, jail facilities, and Department of Corrections facilities.

The Board worked in collaboration with the Department of Health (Department) to identify best practices for communicable disease control for incorporation into rule. Based on these reasons, the Board voted to adopt new rules to update chapter 246-100 WAC. The adopted rules will become effective March 28, 2022. A copy of the adopted rules is 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 21-20-127. The rules were amended, based on comment received during the public comment period and rules hearing, to clarify certain provisions for ease of usability. Additional changes included editorial changes to the use of “and/or” and removal of stigmatizing language, removing the term “eye” in reference to exposure as it was repetitive with the term “mucous membranes”, further clarifying the use of pre-exposure prophylaxis to recognize ‘undetectable equals untransmittable’ in

regard to HIV, clarifying that certain information be provided in a culturally and linguistically appropriate manner, and clarifying that cease and desist orders require documentation of a pattern of behavior endangering the public health.

Comments on Proposed Rules

The Board received written comments from one individual during the formal public comment period and received verbal testimony from 29 individuals at the public rules hearings held on November 10, 2021, and January 12, 2022. The following table is a summary of comments received on the proposed rules and the Board’s response:

Comments on the Proposed Rule	
Public Comment	Board of Health Action
Commenter requested the rule reflect the notion of ‘undetectable is untransmittable’ in the context of HIV.	The adopted rule includes clarifying language adopted at the rules hearing, which further recognizes this concept in the context of requirements for issuing a health order or cease and desist order in WAC 246-100-203 and WAC 246-100-2031.
Commenter requested that the rules not include any policies that result in penalties.	No change. Chapter 70.24 RCW establishes penalties for violating lawful orders issued by a state or local health officer, intentional transmission of HIV, and violating provisions of the chapter or rule adopted by the Board. The adopted rule reiterates the statutory requirement.
Commenter requested replacing certain instances of “people living with HIV” with “people newly diagnosed with HIV”.	No change. Inclusion of this language would limit the ability of state and local public health to continue case management and provide connection to resources for those diagnosed with an STI.
Commenter said that the proposed rule would expand the current definition of behavior endangering the public health to include the exposure of one individual.	The adopted rule includes clarifying language adopted at the rules hearing, which requires a pattern of behavior to occur for a local health officer to issue a health order (WAC 246-100-203).
Commenter said that the rules penalize a person with HIV for seeking treatment.	No change. The rule does not create penalties for an individual seeking treatment for HIV or any STI.

Commenter said that nearly every person convicted has been a person of color and this does not align with the Board's equity values.	No change. The adopted rule aligns with the statutory changes amending penalties for intentional transmission of HIV.
Commenter asked for clarification if an individual needs to disclose their HIV status if they are virally undetectable and incapable of spreading.	No change. The rule outlines requirements for state and local health officers when individuals are engaging in behaviors endangering public health. These requirements exclude individuals who are adhering to a medication regimen.
Several commenters requested that the Board not mandate vaccines for children.	No change. This comment is outside the scope of chapter 246-100 WAC.
Several commenters said that WAC 246-100-040 and WAC 246-100-045 are concerning and should be repealed.	No change. This comment is outside the scope of current rulemaking.

Remaining Public Opposition to the Rule

The Board does not anticipate any remaining public opposition to the adopted rule but does anticipate continued opposition to sections of chapter 246-100 WAC not amended by this rule revision.

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 communicabledisease@sboh.wa.gov.

Respectfully,



Michelle A. Davis
Executive Director