

# WASHINGTON STATE BOARD OF HEALTH

**Date:** March 9, 2022

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

**From:** Keith Grellner, Board Chair

**Subject:** Rulemaking Petition – Requests to Repeal WAC 246-100-040, Procedures for Isolation and Quarantine, and WAC 246-100-070, Enforcement of Local Health Officer Orders

## Background and Summary

### A. Rulemaking Petitions

The Administrative Procedures Act (RCW 34.05.330) allows any person to petition a state agency to request adoption, amendment, or repeal of any rule. Upon receipt of a petition, the agency has sixty days to either (1) deny the petition in writing stating the reasons and, as appropriate, offer other means for addressing the concerns raised by the petitioner, or (2) accept the petition and initiate rulemaking.

On January 26, 2022 the Board received two petitions for rulemaking from Sheryl J. Evans and Renault P. Evans requesting that the Washington State Board of Health (Board) repeal

- WAC 246-100-040, Procedures for Isolation and Quarantine and
- WAC 246-100-070, Enforcement of Local Health Officer Orders.

The Board received an additional petition from Jim Koch requesting the repeal of WAC 246-100-040. The petitioners state that the referenced sections of chapter 246-100 WAC violate the Eighth and Ninth Amendments of the United States Constitution, the Bill of Rights, and the Declaration of Independence. The petition further states that “the vaccines” are ineffective and therefore the rules are not necessary.

### B. Isolation and Quarantine Rules

The Board’s authority under RCW 43.20.050(2)(e) requires the Board to adopt rules for the imposition and use of isolation and quarantine in order to protect public health. The isolation and quarantine rules are set forth in WAC 246-100-040 through 246-100-070. The rules acknowledge constitutional liberty protections, while providing the tools necessary to prevent and control death and morbidity caused by the spread of dangerous communicable diseases. In particular, the constitutional right to due process, stemming from the Fourteenth Amendment, is recognized as applicable.

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The current rules were established in 2003 with the stated purpose being, “To provide guidance to first-responders in the event of bioterrorism attack, chemical, or radiologic attack, or major infectious disease outbreak about the enforceability of local health officers' orders and the due process rights of individuals subject to isolation or quarantine orders.” (WSR 03-05-048). The rules ensure that anyone subject to an isolation or quarantine order is able to challenge the order in court. The rules put in place due process protections that were not previously codified.

RCW 70.05.070(3) authorizes local health officers to “control and prevent the spread of any dangerous, contagious, or infectious diseases that may occur within his or her jurisdiction.” WAC 246-100-040 establishes, among other things, requirements that a local health officer must meet before issuing an emergency isolation or quarantine order. In addition, the order must contain a notice advising a person quarantined of their right to petition the superior court for a release from isolation or quarantine, their right to counsel, including counsel at government expense if they cannot afford legal counsel. Another isolation and quarantine rule, WAC 246-100-045, establishes minimum principles and conditions for isolation and quarantine, including that it be the least restrictive means necessary to protect public health. WAC 246-100-055 further describes procedures for obtaining relief from isolation and quarantine in superior court.

WAC 246-100-070 provides that an order issued in accordance with the isolation and quarantine rules shall be enforced by law enforcement personnel and others, consistent with RCW 43.20.050. It also provides for criminal sanctions for violation of the rules or an order issued by a local health officer, as provided in RCW 43.20.050 and 70.05.120. The rule substantially reflects language that is already set forth in statute.

### Recommended Board Actions

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

The Board declines the petitions to initiate rulemaking to repeal WAC 246-100-040 and WAC 246-100-070 for the reasons articulated by Board members and directs staff to notify the requestors of the Board's decision.

OR

The Board accepts the petitions for rulemaking to repeal WAC 246-100-040 and WAC 246-100-070. The Board directs staff to notify the requestors of its decision and to file a CR-101, Preproposal of Inquiry, under its authority in RCW 43.20.050.

### Staff

Samantha Pskowski

Washington State Board of Health

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