

WASHINGTON STATE BOARD OF HEALTH

Date: March 9, 2022

To: Washington State Board of Health Members

From: Bob Lutz, Board Member

Subject: Rulemaking Petitions – Requests to Repeal WAC 246-100-036, Responsibilities and duties – Local health officers

Background and Summary:

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 February 21, 2022 the Board received two petitions for rulemaking from Allison Sander and Kimberlee Baker requesting that the Washington State Board of Health (Board) amend WAC 246-100-036, Responsibilities and duties – Local health officers, to include new requirements for local health officers to receive approval from the local board of health for any communicable disease mitigation measures that differ from those implemented by the state Department of Health. Further, the Board received a petition for rulemaking on February 23, 2022 from Arne Christensen requesting amendment to the same section of rule to authorize local boards of health to oversee local health officer actions.

The petitioners request new language authorizing the local board of health to approve or veto the local health officer's policies. The petitioners state the rule changes are needed in order to prevent abuse of power by a single individual in the local health officer position. The petitioners further state that the requested changes would give input to local health officer actions from experienced health care professionals and elected officials who are accountable to the broader community.

WAC 246-100-036 was adopted pursuant to the Board's authority to adopt rules to prevent and control disease under RCW 43.20.050(2)(f). It is consistent with the local health officer authorities established by the legislature in RCW 70.05.070 and chapter 70.24 RCW. RCW 70.05.070(3) describes the local board of health's or local administrator's oversight role regarding local health officer activity, and requires the local health officer, "acting under the direction of the local board of health or under direction of the administrative officer, to "control and prevent the spread of any dangerous, contagious, or infectious diseases that may occur within his or her jurisdiction." Additionally, the local board of health has the authority and duty to "[s]upervise the maintenance of all health and sanitary measures for the protection of

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public health within its jurisdiction.” The law does not state the manner in which local boards of health must provide direction to local health officers and likely varies across jurisdictions. In addition, WAC 246-100-036(1) provides for local health officer consultation with local health care providers, health facilities, emergency management personnel, law enforcement agencies, and any other entity he or she deems necessary, to establish plans, policies, and procedures for instituting emergency measures necessary to prevent the spread of communicable disease or contamination.

Recommended Board Actions

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

The Board declines the petition to initiate rulemaking to repeal WAC 246-100-036 for the reasons articulated by Board members and directs staff to notify the requestors of the Board’s decision.

OR

The Board accepts the petition for rulemaking to repeal WAC 246-100-036, Responsibilities and duties – Local health officers The Board directs staff to notify the requestor of its decision and to file a CR-101, Preproposal of Inquiry, under its authority in RCW 43.20.050.

Staff

Samantha Pskowski

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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