WASHINGTON STATE BOARD OF HEALTH

Notice of Public Meeting

Monday, January 9, 2023
9:30 a.m. – 2:40 p.m.
Virtual Meeting via ZOOM Webinar
(hyperlink provided below)

Final Agenda

Time	Agenda Item	Speaker
9:30 a.m.	Call to Order & Introductions	Keith Grellner, Board Chair
9:35 a.m.	1. Approval of Agenda—Possible Action	Keith Grellner, Board Chair
9:40 a.m.	2. Approval of November 9, 2022, Minutes – Possible Action	Keith Grellner, Board Chair
9:45 a.m.	3. Announcements and Board Business	Michelle Davis, Executive Director
10:05 a.m.	4. Department of Health Update	Tao Sheng Kwan-Gett, Secretary's Designee, Chief Science Officer Alexandra Montaño, Director, Policy and Legislative Relations, Disease Control and Health Statistics
10:35 a.m.	5. Public Comment	Please note: Verbal public comment may be limited so that the Board can consider all agenda items. The Chair may limit each speaker's time based on the number people signed up to comment.
10:55 a.m.	Break	
11:10 a.m.	6. Emergency Rulemaking – On-Site Sewage Systems, WAC 246-272A-0110, Proprietary Treatment Products and Supply Chain Shortages – Possible Action	Tao Kwan-Gett, Chief Science Officer and Secretary's Designee Stuart Glasoe, Board Staff Jeremy Simmons, Department of Health
11:25 a.m.	7. Update – On-Site Sewage Systems, Chapter 246-272A WAC	Keith Grellner, Board Chair Stuart Glasoe, Board Staff Jeremy Simmons, Department of Health
12:25 p.m.	Lunch	
1:00 p.m.	8. Rulemaking Petition – The Board has received a petition to revise Environmental Health and Safety Standards for Primary	Keith Grellner, Board Chair Kaitlyn Campbell, Board Staff

Time	Agenda Item	Speaker
	and Secondary Schools, Chapter 246-366A WAC —Possible Action	
1:30 p.m.	9. 2023 Legislative Statement – Possible Action	Michelle Davis, Board Executive Director
1:45 p.m.	10. Briefing – Abbreviated Rulemaking for Human Remains Reduced Through Natural Organic Reduction, Chapter 246-500-055 WAC	Patty Hayes, Board Sponsor Molly Dinardo, Board Staff
2:00 p.m.	11. Local Health Officers Complaint – Possible Action	Keith Grellner, Board Chair Molly Dinardo, Board Staff
2:20 p.m.	12. Board Member Comments	
2:40 p.m.	Adjournment	

- **To access the meeting online and to register:**
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WASHINGTON STATE BOARD OF HEALTH

Draft Minutes of the State Board of Health
November 9, 2022
Electronic meeting via ZOOM Webinar

State Board of Health members present:
Keith Grellner, RS, Chair
Kelly Oshiro, JD, Vice Chair
Elisabeth Crawford
Patty Hayes, RN MN
Socia Love-Thurman, MD
Temple Lentz, MOL
Tao Sheng Kwan-Gett, MD, MPH, Secretary's Designee
Dimyana Abdelmalek, MD, MPH

State Board of Health members absent:
Umair A. Shah, MD, MPH
Stephen Kutz, BSN, MPH
Melinda Flores

State Board of Health staff present:
Michelle Davis, Executive Director
Melanie Hisaw, Executive Assistant
Kelie Kahler, Communication Manager
Stuart Glasoe, Health Policy Advisor
Kaitlyn Donahoe, Health Policy Advisor
Molly Dinardo, Health Policy Advisor
LinhPhung Huỳnh, Department of Health
Lindsay Herendeen, Health Policy Analyst
Cait Lang-Perez, Health Policy Analyst
Miranda Calmjoy, Health Policy Analyst
Jo-Ann Huynh, Administrative Assistant
Hannah Haag, Community Outreach Coordinator
Grace Cohen, Department of Health
Lilia Lopez, Assistant Attorney General

Guests and other participants:
Kelly Cooper, Legislative Affairs Director
Amy Ferris, Chief Financial Officer

Keith Grellner, Board Chair, called the public meeting to order at 9:31 a.m. and read from a prepared statement (on file). He then detailed operating procedure and ground rules for conducting a virtual meeting, and asked Board members to introduce themselves.

1. APPROVAL OF AGENDA

Motion: Approve November 9, 2022, agenda
Motion/Second: Member Hayes/Vice Chair Oshiro. Approved unanimously

2. ADOPTION OF OCTOBER 12, 2022, MEETING MINUTES

Motion: Approve the October 12, 2022, minutes.

Motion/Second: Member Hayes/Vice Chair Oshiro. Approved unanimously

3. **BOARD ANNOUNCEMENTS AND OTHER BUSINESS**

Michelle Davis, Board Executive Director greeted the Board members and said that Members Flores and Kutz send their regrets that they are unable to join the meeting. Ms. Davis said she is delighted to announce Dr. Dimyana Abdelmalek is our newest member, representing local health officers. Ms. Davis said this is Temple Lentz's last meeting with us since Member Lentz did not run for re-election. She said it has been a joy to work with Member Lentz, that we will miss Member Lentz and we are grateful for Member Lentz's leadership especially with Local Board of Health composition rule work.

Ms. Davis directed Board members to the meeting materials under tab 3. She announced that today's meeting is Molly's Dinardo's first since joining the staff in mid-October. Ms. Davis said the September cCMV newborn screening technical advisory committee meeting notes are in the meeting materials and reminded the Board of the full briefing it received at its October meeting.

Ms. Davis referred Board members to an email from the Department of Health (DOH) indicating it is extending the school reporting deadline for its annual school and childcare reporting plan. The deadline was extended from November 1 to December 1 to allow DOH to develop resources and to allow schools time to gather data needed to complete the report. She said the last item is the emergency rule for proprietary on-site sewage system treatment products. The Board adopted the emergency rule at the October Board meeting. Ms. Davis commented on the large volume of public comments related to COVID-19. She reminded Board members and the viewing public, that the Board reviewed the COVID-19 vaccine earlier this year and determined it would not add the vaccine to documentation requirements for school and childcare entry. She said the Board had not changed its position and this topic is not on the agenda.

4. **DEPARTMENT OF HEALTH UPDATE**

Tao Sheng Kwan-Gett, Chief Science Officer and Secretary's Designee, provided an update on the topics of Monkeypox (MPV), COVID-19, influenza (flu), and Respiratory Syncytial Virus (RSV) (presentation on file).

Member Kwan-Gett said MPV and COVID-19 cases are declining, but it is important not to be complacent. For COVID-19, the uptick of hospital admissions across the nation among individuals 70 years and older shows we cannot be complacent and need to keep moving forward with the state's COVID-19 response plan. Member Kwan-Gett said we are seeing a record-breaking number of visits in pediatric emergency departments for RSV. The wave is unusually early. The state is also seeing flu on the rise earlier than usual—more like what we would see in December or January each year.

Member Kwan-Gett said hospitals are under strain for a variety of reasons (workforce shortages, RSV activity, etc.). The Department is concerned that flu and COVID-19 together will cause severe strain on our healthcare system. He emphasized that we need to do more to keep people out of the hospital, including encouraging COVID-19 boosters. He provided website and phone contact information that the public can use to make a vaccine appointment.

Amy Ferris, Chief Financial Officer, and Kelly Cooper, Legislative Affairs Director, provided an overview of the Department's legislative and budget proposals for the 2023 – 2025 biennium (presentation on file). They said these requests to the legislature align with the Department's transformational plan, which focuses on five strategic priorities: health and wellness; health systems and workforce transformation; environmental health; emergency response and resilience; and global health.

Ms. Ferris said the Department is requesting over $800 million in state resources and over $100 million in spending authority to other fund sources. She said $335 million of the proposal is for continuation of COVID-19 response resources. They shared the services, programs, authority, data systems, and infrastructure that these investments would support (materials on file)

Ms. Cooper said the legislature provided increased funding to the state's public health system in the 2021 – 2023 operating budget and indicated it would increase investment in the foundational public health system in the upcoming biennium. The Department's proposal would realize the legislature's commitment. Kelly Cooper said these investments would help the state's public health system maintain necessary services, right-size programs, maintain data systems and other infrastructure, and fully fund efforts to meet new statutory requirements.

Board members did not have questions or comments.

5. PUBLIC COMMENT

Chair Grellner opened public comment at 10:39 a.m. and gave 3 minutes per commenter.

J Polehn stated their opposition to the COVID-19 vaccine and effects, government spending, and equity and inclusion.

Jodi Wilke stated their opposition to the COVID-19 vaccine and effects, government accountability, and pharmaceutical companies.

Ken Harp stated their opposition to the COVID-19 vaccine and effects and provided comments on the Advisory Committee on Immunization Practices (ACIP) and Emergency Use Authorization (EUA) and stated their position on vaccine safety.

Natalie Chavez stated their opposition to the COVID-19 vaccine and effects and provided personal stories about vaccine efficacy and injuries.

Chair Grellner closed public comment at 10:56 a.m.

Additional Public Comment at 12:49 p.m.:

Lisa Templeton stated their opposition to COVID-19 vaccine and effects, and provided comments on COVID-19 messaging, data, and ACIP recommendations.

Robert Runnells stated their opposition to the COVID-19 vaccine and effects, and provided comments on ACIP recommendations, vaccine efficacy, and policy.

Chair Grellner closed public comment at 12:55 p.m.

6. EMERGENCY RULE – NOTIFIABLE CONDITIONS, COVID-19 REPORTING, WAC 246-101-017
– POSSIBLE ACTION

Tao Sheng Kwan-Gett, Chief Science Officer and Secretary's Designee, invited Kaitlyn Donahoe, Board Staff, to provide a briefing on a proposed ninth emergency rule to extend the designation of COVID-19 as a notifiable condition. Ms. Donahoe provided background on the topic, which covered prior emergency rules, the contents of a proposed ninth emergency rule, the overall regulatory landscape for COVID-19, proposed future disease surveillance, and next steps (presentation on file).

Ms. Donahoe said the Board has adopted eight prior emergency rules on COVID-19 since July 2020. She said the rules generally designate COVID-19 as a notifiable condition and require reporting from health care providers and facilities, laboratories, local health jurisdictions (LHJs), and the Department of Agriculture. Ms. Donahoe said that rules have shifted over time based on evolving guidance from the U.S. Department of Health and Human Services as well as feedback from regulated entities and LHJs. She said staff are not recommending changes to the rule language, which reflects the same requirements as the eighth emergency rule.

Ms. Donahoe said the state has a woven landscape of rules and requirements for COVID-19 reporting to ensure: (1) regulated entities are in compliance; and (2) public health is collecting the necessary information to respond effectively to the pandemic. Kaitlyn discussed permanent rulemaking for the Notifiable Conditions rule (chapter 246-101 WAC), which become effective on January 1, 2023. Ms. Donahoe recommended that the Board adopt a ninth emergency rule on COVID-19 to ensure compliance with reporting through the end of 2022, and that the Department of Health may issue a provisional reporting letter that clarifies reporting requirements for COVID-19 in the permanent rule and the federal CARES Act. Ms. Donahoe said these actions would allow for collection of COVID-19 test results and additional patient data through the end of the public health emergency.

Patty Hayes, Board Member, thanked staff for presenting complex information in an understandable way.

Motion: The Board adopts a ninth emergency rule to extend the designation of COVID-19 as a notifiable condition and the required reporting of essential testing and demographic data to do the necessary public health response to COVID-19. The Board directs staff to file a CR-103E to extend WAC 246-101-017 without lapse, effective December 16, 2022, and subsequently rescind the rule effective December 31, 2022 when the permanent rules take effect. The Board further directs staff to work with the Department of Health to assist with and facilitate communication to regulated entities to ensure continued compliance and understanding of complexity so they can be in compliance with HHS guidance through the end of the declared public health emergency.

Motion/Second: Hayes/Love-Thurman. Approved unanimously

7. REQUEST FOR DELEGATION FOR RULEMAKING, CHAPTER 246-491, VITAL STATISTICS, CERTIFICATES – POSSIBLE ACTION

On behalf of the Department of Health, Dr. Tao Sheng Kwan-Gett, Chief Science Officer and Secretary's Designee, requested delegated rulemaking authority from the Board for chapter 246-491 WAC to bring rules in line with current state and federal laws.

Molly Dinardo, Board Staff, gave an overview of the relevant Vital Statistics rules and rationale for rulemaking (presentation on file). Ms. Dinardo said RCW 43.20.050(4) allows the Board to delegate rulemaking authority to the Department in some circumstances. The Board delegates rulemaking authority on a case-by-case basis based on criteria outlined in Board Policy Number 2000-001.

Ms. Dinardo said the Department would like to propose and adopt changes to WAC 246-491-029, which sets forth the specific information collected in the confidential section of live birth and fetal death certificates. Amending this rule assures consistency with current state and federal laws, including changes to the Uniform Parentage Act (UPA), a new vital statistics law (Chapter 70.58A RCW), House Bill 1031, and the 2014 statistical standards from the National Center for Health Statistics. These anticipated rule revisions are expected to support policy and programmatic changes made to other vital statistics rules. With delegated rulemaking authority, the Department would notify interested parties by email, provide the proposed rule language to interested parties, and post rulemaking information on the Department's Vital Statistics webpage.

There were no questions or comments from Board members.

Motion: The Board delegates to the Washington State Department of Health rulemaking authority to make changes to WAC 246-491-029, as appropriate, to align with current law and National Center for Health Statistics standards.

Motion/Second: Member Hayes/Member Lentz. Approved unanimously

8. UPDATE - BOARD COMPLAINT POLICY – POSSIBLE ACTION

Kelly Oshiro, Board Vice Chair, gave a brief overview of the Board Complaint Policy and introduced Kaitlyn Donahoe, Board Staff, to discuss proposed revisions. Ms. Donahoe reminded the Board that members elected to form an ad hoc committee to workshop language in the policy. She recapped that the ad hoc committee met in September 2022 and discussed the proposed revisions from the group. Ms. Donahoe noted that much of the revisions are editorial, and substantive revisions pertain to the Board's responsibility to follow up with complainants and the subject of the complaint upon final disposition.

Patty Hayes, Board Member, asked for clarification on language related to Board member recusal during the complaint process. Members and staff discussed adding

language to the policy, making it clear that a Board member would recuse themself if they were consulted by staff during the preliminary investigation. Ms. Davis provided historical context of the involvement of a Board member during the preliminary investigation. Chair Grellner reflected that under Robert's Rule of Order, recusal is somewhat subjective, and that he understands the desire for clarity as well as the desire to acknowledge the varying levels of engagement.

Dimayana Abdelmalek, Board Member asked for additional information on how complaints are usually resolved. Ms. Davis recalled that the Board has received complaints on illegal drug labs and whether the health officer appropriately closed and provide appropriate signage, whether or not a health officer required proof of immunization in their own community, and recently a complaint alleging a local public health organization inappropriately released a health officer from their agency. Ms. Davis explained that the resolution of these complaints varied from preliminary investigations informing Board action to involving a third-party investigator and the Office of Administrative Hearings (OAH).

Lilia Lopez, Assistant Attorney General, discussed the possibility of adopting procedural rules to facilitate the process of the Board calling a hearing.

Chair Grellner and Member Hayes discussed proposed revisions to the language regarding conflicts of interest in the policy.

Member Kwan-Gett asked for clarification regarding conflicts of interest if a Board member participates in an investigation. Ms. Lopez highlighted the Administrative Procedures Act and the separation of someone involved in the investigation process as a decision maker.

Chair Grellner, Member Hayes, and Lilia Lopez provided guidance to staff on further revisions to the complaint policy.

Motion: The Board adopts the proposed revisions to Policy 2015-001, Responding to Complaints Against a Local Health Officer or Health Administrator, along with revisions agreed upon at today's meeting, and directs staff to finalize the policy with the Board's Chair and Executive Director.

Motion/Second: Member Hayes/Member Lentz. Approved unanimously.

9. PETITION – ADDING MPS II TO CHAPTER 246-650 WAC, NEWBORN SCREENING – POSSIBLE ACTION

Kelly Oshiro, Board Vice Chair, gave a brief introduction to the petition process and stated that a few weeks ago, the Board received a petition to add Mucopolysaccharidoses Type II (MPS II) as a condition for newborn screening in Chapter 246-650 WAC.

Molly Dinardo, Board Staff, gave a brief overview of the Board's authority and the typical process for adding new conditions to the newborn screening panel. Ms. Dinardo said that under RCW 70.83.050, the Board can adopt rules for newborn screening. If the Board receives a petition regarding a particular condition, staff will conduct a preliminary

review of the condition, also known as a qualifying assumption analysis. In this analysis, the condition is assessed against 3 guiding principles that govern all aspects of the evaluation of a candidate condition. These principles are: 1) Evidence, the decision to add a condition must be evidence based, 2) Accessibility, all children who screen positive should have reasonable access to diagnostic and treatment services, 3) The benefits of screening should outweigh the harms. Once staff conducts the qualifying assumption analysis, they will bring this information back to the Board, and the Board will decide whether to convene a Technical Advisory Committee (TAC) if the Board determines there is enough information to do so. Preparation for TAC takes 6 months of research at minimum. The TAC will then vote to recommend the inclusion of a condition to the panel using the Board's 5 newborn screening criteria.

Ms. Dinardo mentioned that because of the timing of the petition request, and the timing of the Board's November meeting, staff could not complete a preliminary review to the extent typically done for prior conditions. As such, the information provided to the Board was not as in-depth as what Board members might have heard in other meetings.

Dr. John Thompson, Department of Health, gave a brief overview of MPS II. Dr. Thompson referenced the addition of MPS II to the federal Recommended Uniform Screening Panel and provided some details outlined in the Association of Public Health Laboratories (APHL) New Disorders Report on MPS II. He also mentioned that although the federal group has already conducted a rigorous review of MPS II, staff will need to review their extensive report, and conduct additional research as needed (for example, get testing data from some of the other states that are already testing for MPS II or through pilot studies, published literature, etc.).

Chair Grellner asked for clarity on the Board's options regarding the petition request. He said it sounds like the Board has three options – either deny the petition outright, accept the position to move forward with adding the condition, which would bypass the process the Board typically follows, or follow the Board's policies to convene a TAC and possibly add the condition at another time. Dr. Thompson clarified that another option would be to deny the petition and conduct the qualifying assumption analysis. Dr. Thompson mentioned that usually, Department or Board staff, sometimes graduate students, conduct the preliminary review to see if there is enough data to move to a TAC. Since the federal group has done a thorough review, the Board could decide to skip that step and move straight to convene a TAC based on the work of the federal committee.

Vice Chair Oshiro asked Dr. Thompson how long the qualifying assumption analysis usually takes. Dr. Thompson responded that due to current resources and staffing turnovers, a qualifying assumption analysis could take about 3-months.

Socia Love-Thurman, Board Member, inquired if MPS II was previously brought to the Board for review, and currently, how many states include the condition in their newborn screening panels. Dr. Thompson confirmed that this was the first time this condition had been brought to the Board, and wasn't sure which states currently screen for MPS II but would look into it.

Elisabeth Crawford, Board Member, requested clarification on how the information on Board action would be communicated to the petitioner if Board was to deny the petition and move forward with the information already available. Dr. Thompson asked Kaitlyn Donahoe, Board Staff, to weigh in on this process. Ms. Donahoe confirmed that the Board has a policy for handling rulemaking petitions. Based on this policy, staff draft an official letter to the petitioner with the Board's determination and rationale for accepting or denying the petition, with the next steps outlined. Ms. Donahoe also noted that the petitioner could appeal the Board's determination to the Governor's Office.

Dr. Thompson responded back to Member Love-Thurman's previous question regarding states currently screening for MPS II. There are two states, and these are Illinois and Missouri.

Motion: The Board declines the petition for rulemaking to add MPS II as a condition for newborn screening in Chapter 246-650 WAC, and directs staff to work with the Department of Health to perform a qualifying assumption analysis to evaluate MPS II for inclusion in WAC 246-650-020 and then report back to the Board so the Board can determine whether to establish a technical advisory committee to evaluate MPS II against the Board's criteria for adding conditions to the newborn screening rule.

Motion/Second: Member Hayes/Member Lentz. Passed unanimously.

Member Dr. Kwan-Gett stated his support of the motion, and noted that Technical Advisory Committees (TACs) tend to be personnel and time-intensive. He asked if the qualifying assumption analysis alone would provide enough information for the Board to decide about adding MPS II as a newborn screening condition.

Ms. Davis replied that while TACs resource-intensive, they provide critical information for the Board's rulemaking process. She said the TACs are multidisciplinary, which contributes to a deeper level of understanding of the topic, and include cost-benefit analyses, whereas qualifying assumption analyses do not. Ms. Davis explained that it is especially important to understand the impact on the healthcare system and state budget for newborn screenings since all babies in Washington state are screened, and 50 percent of families are on Medicaid.

Chair Grellner thanked Ms. Davis and stated support of the motion for similar reasons. He also said that it is advisable for the Board to follow established procedures and not set a new precedent in this area.

10. LEGISLATIVE STATEMENT

Michelle Davis, Board Executive Director, gave a brief overview of the Board's legislative statement, which is intended to provide guidance to staff regarding policy positions on issues that may come before the Legislature. She said that during Legislative session, Board staff will review the daily bill introductions to identify legislation that impacts the Board's statutory authority or the public health system, as well as the focused priority areas on this statement. Ms. Davis said that she will send to Board members a marked up 2023 statement for their comments and suggestions. She directed Board members to finalize their comments within the first week of December,

so a proposed final draft Legislative Statement can be presented for adoption and approval at the January 2023 Board Meeting.

Chair Grellner thanked Executive Director Davis for her comments. He then asked whether the crab biotoxin legislation was passed last year and whether it needed to be included in the Legislative Statement.

Stuart Glasoe, Board Staff, replied that the bill had been making good progress but ultimately failed to pass. Stuart is eager to support it again this coming year.

Chair Grellner said that staff could keep that item in the Legislative Statement. He noted, however, that the Local Health Officer item could be removed, and that an item regarding pool rules could be added. He said he looked forward to making these comments formally once the draft is sent out.

Member Hayes thanked Ms. Davis for the overview and looks forward to the draft statement as well. She said she would like to see a statement around reproductive health, as well as more content in the maternal child health section. Member Hayes wishes to see discussion of bills that affect childhood or family trauma and mental health associated with the pandemic.

11. PROPOSED 2023 MEETING SCHEDULE – POSSIBLE ACTION

Michelle Davis, Executive Director, reviewed the proposed 2023 meeting schedule for the Board and requested Board members' approval for the dates. She said that once the federal emergency order is lifted, staff will reach out to the Board with an updated list of meeting locations for hybrid meetings as well as calendar holds for the meeting dates.

Motion: The Board approves the proposed 2023 meeting schedule.

Motion/Second: Member Crawford/Member Love-Thurman. Approved unanimously

12. BOARD MEMBER COMMENTS

Keith Grellner, Board Chair, called for any comments.

Chair Grellner expressed thanks, good luck and good health to Member Lentz for serving on the board.

Member Lentz said it has been an honor and pleasure to serve on the Board and thanked the fantastic staff. She looks forward to following the Board as a private citizen.

Chair Grellner thanked public commenters for their civility. He hopes with the new year, civility can return to our work and meeting places. He talked about the years of instability, bullying, shaming, and how it needs to stop. Chair Grellner talked about the harm to communities and how children in schools are picking up on this legacy set before then. He said we need to give a better example how to live and get along in a democracy and a community.

Chair Grellner referred to an earlier commenter that asked the Board to ignore the equity efforts, and the Chair stated he does not agree. Chair Grellner talked about an article in the paper about the blatant and overt racism in our youth, saying it is not ok to disparage other people, regardless of political or other opinion. He appealed the Board to encourage our youth to be strong and civil and appealed leaders to set the tone and help lead the way.

ADJOURNMENT

Keith Grellner, Board Chair, adjourned the meeting at 1:05 p.m.

WASHINGTON STATE BOARD OF HEALTH

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Keith Grellner, Chair

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WASHINGTON STATE BOARD OF HEALTH

ENVIRONMENTAL HEALTH COMMITTEE SPECIAL MEETING SUMMARY NOTES

What: Environmental Health Committee

When: December 19, 2022

Participating via Zoom: Board of Health (Board) members Keith Grellner, Chair, Patty Hayes, Steve Kutz; Board staff Kaitlyn Campbell, Stuart Glasoe, Michelle Davis, and Melanie Hisaw; Department of Health (Department) staff Theresa Phillips, Joe Laxson, Peter Beaton, Todd Phillips, Joe Graham, Dave Delong, Mike Means, Dani Toepelt, Jeremy Simmons, Brad Burnham, Mike Ellsworth, Nina Helpling, Jocelyn Jones, and Anna Hidle. No members of the public attended.

Summary Notes:

Environmental Health Rulemaking Project Updates

- Jeremy Simmons and Stuart Glasoe provided a brief update of the status and anticipated timeline of On-Site Sewage System (chapter 246-272A WAC) rulemaking.
- Dani Toepelt and Mr. Glasoe shared updates on the Sanitary Control of Shellfish (chapter 246-282 WAC) rulemaking. Ms. Toepelt described collaboration with the rule advisory committee and tribes in the rulemaking and discussed with Members Hayes and Kutz the timing and jurisdiction of emergency rulemaking during heatwaves and other extreme heat events.
- Kaitlyn Campbell provided high level updates on the Water Recreation (chapters 246-260 and 246-262 WAC) rulemaking, noting the staff's plans for extensive engagement with local health, industry, and community.

Rulemaking Update – Water Recreation, Chapters 246-260 & 246-262 WAC

- Ms. Campbell summarized responses to the team's recent rulemaking survey. She said that over 80 individuals representing local health, industry and regulated entities, community members, and more responded. Ms. Campbell highlighted feedback and policy priorities from local health jurisdictions and regulated entities, noting requests for increased clarity in the rule, guidance regarding natural swimming areas, and what should be incorporated from the federal Model Aquatic Health Code. She said the survey results will inform the rulemaking team's next steps for further engagement with interested parties on the rule revision.

(Continued on the next page)

Preparation for January Board Meeting – On-Site Sewage Systems

- Mr. Glasoe and Mr. Simmons described plans to request a third emergency rule for on-site sewage system proprietary product supply chain shortages, and noted minor updates to this third request
- Mr. Simmons walked through his draft presentation to update the Board on the permanent rulemaking on the on-site sewage systems. Mr. Simmons gave background on on-site sewage systems; the scope of the rules; past history of the rules and rule reviews; the rulemaking process; key issues of the draft rules; and anticipated next steps completing the rulemaking.
- Committee members identified the need to provide additional support to Board members who may not have familiarity with on-site sewage systems. Mr. Glasoe said staff would offer briefings to new members and would add time to the Board update if possible.

2023 Legislative Session Preview

- Ms. Campbell and Joe Laxson provided a preview of the 2023 legislative session. Ms. Campbell discussed her role and the Board's process for identifying, tracking, and analyzing bills. She also shared a brief list of environmental health-related bills that have been pre-filed with the legislature to date. Mr. Laxson discussed anticipated legislation on topics including microenterprise home kitchens, the sanitary control of shellfish (crab), and funding for foundational public health services and public health obligations under the healthy environment for all (HEAL) act.

Staff Announcements & Updates

- Mike Means provided an update on PFAS, including a recent feature in the Seattle Times and anticipated release of federal drinking water standards.
- Ms. Campbell reminded Committee Members to connect with Executive Director Davis on the Board's legislative statement and discussed an upcoming survey for Board Members regarding leadership opportunities in 2023.

Committee Member Comments, Questions, and Next Steps

- Committee Members thanked Board and Department staff. Committee Chair Grellner noted the Board and Committee accomplished a lot this year and wished staff happy holidays.

To request this document in an alternate format or a different language, please contact Kelie Kahler, State Board of Health Communication Manager, at 360-236-4102 or by email kelie.kahler@sboh.wa.gov. TTY users can dial 711

WASHINGTON STATE BOARD OF HEALTH

HEALTH PROMOTION COMMITTEE SPECIAL MEETING SUMMARY NOTES

What: Health Promotion Committee

When: December 14, 2022

Participating via Zoom: Board Members Patty Hayes, Stephen Kutz, and Kelly Oshiro; Board Staff, Molly Dinardo, Cait Lang-Perez, Mikayla Leezy, Hannah Haag, Melanie Hisaw; and one member of the public, Erika Clough.

Summary Notes:

Opening and Introductions
Molly Dinardo, Board Staff, opened the meeting with a brief overview of the policy subcommittee structure, a review of the meeting agenda, and had Board Members introduce themselves.

Committee Chair Selection
Ms. Dinardo noted per the Board's bylaws, each policy subcommittee must select a Committee Chair. The bylaws are silent on the process of selecting a committee chair, so staff opened it up to Board members to decide. Member Stephen Kutz volunteered as the Committee Chair for this meeting.

Rulemaking Update – Handling of Human Remains, Chapter 246-500 WAC
Board Staff Molly Dinardo, Cait Lang-Perez, and Mikayla Leezy recapped the Board's authority in developing standards for health and safety measures for the handling and final disposition of human remains and updates made to the rule in 2020. Staff also provided information on the implementation of this rulemaking and the next steps identified based on information collected through post-implementation follow-up with regulated entities. Staff also asked if there was a Board member present who would be willing to sponsor this rulemaking and if Board members thought post-implementation surveys should be incorporated into future Board practices.

Member Patty Hayes asked for clarification about the initial testing parameters outlined in WAC 246-500-055 and whether it included testing for medical implants. Staff clarified that under the rule, facilities must analyze all instances of Natural Organic Reduction (NOR) for physical contaminants, such as medical implants and dental fillings, and then send the first 80 instances of NOR to a third-party lab to test for metals and other items

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listed in Table 500-A of the rule. Member Hayes volunteered to be the sponsor for this exception rulemaking.

Members Kelly Oshiro and Hayes noted that a potential unintended consequence of a post-rulemaking survey is that people could see a post-implementation survey as another opportunity to influence changes in rulemaking. Staff would need to be very clear about when a post-implementation survey should be conducted and the exact scope and purpose of the survey.

Informational Briefing – Recreational Use of Kratom
At a previous subcommittee meeting, a Board Member requested an informational briefing on the origin and recreational use of Kratom in the U.S. Mikayla prepared an educational briefing on this topic and presented it to Board members. Mikayla also noted that the Board does not have the authority to regulate Kratom.

Member Oshiro asked which agency could be responsible for regulating Kratom. Staff responded that the product is not currently regulated but maybe could be under the Liquor and Cannabis Board (LCB).

Member Kutz expressed a strong interest in regulating Kratom and would like the Board to take action on it. He shared that it's an abused substance, easily accessible, and kids are getting access to it. Member Kutz also had a staff member about 5-6 years ago die of a Kratom overdose, and since then has been asking about what can be done regarding substance regulation. Member Kutz is curious if the Board could put together a proposal on this. He feels it's likely too soon for this session but is interested in continuing discussions.

Member Hayes raised a question regarding which states have banned Kratom and when these bans occurred. Member Hayes also noted that even though the Board doesn't have direct authority, possible avenues to address Kratom and other emerging health issues could be through upcoming Board strategic planning or perhaps through a policy statement – could check with the Attorney General's Office about what's possible.

Member Oshiro asked if Kratom was cultivated or grown locally in Washington, or other areas of the U.S. Mikayla noted she did not come across this information in her research. Member Oshiro said she would support mentioning that Kratom is a substance that the Board is concerned about – would like to see some sort of bill released to start conversations.

HP Committee Members requested that the Board and Board staff consider adding Kratom regulation to the Board's legislative statement or strategic plan.

2023 Legislative Session Preview

This agenda item was skipped. Staff responsible for this item couldn't attend the meeting. Staff will provide updates as the session starts.

Staff Updates and Announcements
Ms. Dinardo announced to Board members that staff will send a survey to assess their interest in leadership opportunities in 2023, such as participation and leading Board subcommittees, participation in ad hoc committees, and rulemaking sponsorship. She explained that subcommittee meetings have been focused on preparing for the Board meetings, and agendas have been set by Board staff. Ms. Dinardo noted today's Kratom briefing is a good example of a topic that is important and could serve as space for emerging health topics outside of the Board's authority. The survey will ask about Board member interests and priorities that could be incorporated into the Board's work. Survey open 12/16/22 – 1/15/23 and will guide the development of committee agendas and meeting schedules. Molly mentioned staff will present survey findings to the Board sometime in early 2023.

Member Kutz shared that sponsoring rulemaking projects and other Board initiatives is a great learning experience. He encouraged members to sign up and said it's not overburdensome.

Member Hayes said she thought the survey was a good idea and wished more Board members were present for today's meeting. She expressed concern about current member participation. Unrelated to the survey topic, Member Hayes added that she sits on a newly developed Public Health Advisory Board with another Board staff member. She questioned whether the advisory board's work might fall with the Board's future work and if there is a place for a briefing on this to the Board, and how we might align strategies and priorities.

Member Kutz noted that if Board members are newer to public health or want to have conversations on the health side of things, the Health Promotion committee is a great place to bring this conversation to. He commented that it's a great opportunity to learn more about environmental health and health promotion, regardless of your background in public health.

Committee Member Comments, Questions, and Next Steps
Member Oshiro thanked staff for leading this meeting.

To request this document in an alternate format or a different language, please contact Kelie Kahler, State Board of Health Communication Manager, at 360-236-4102 or by email kelie.kahler@sboh.wa.gov. TTY users can dial 711

RULE-MAKING ORDER
EMERGENCY RULE ONLY

CR-103E (December 2017)
(Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 16, 2022
TIME: 7:43 AM

WSR 23-01-081

Agency: Washington State Board of Health

Effective date of rule:

Emergency Rules

☒ Immediately upon filing.

☐ Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: WAC 246-101-017, Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. The Washington State Board of Health has adopted a ninth emergency rule to continue to designate COVID-19 as a notifiable condition and establish reporting requirements for health care providers, health care facilities, laboratories, local health jurisdictions, and the Department of Agriculture to report certain data with COVID-19 test results, including relevant demographic details (e.g., patient's age, race, ethnicity, sex), and testing information. The rule allows for certain waivers by a local health officer. The rule establishes what testing and demographic data need to be reported as well as the timing and mechanism of reporting in accordance with Public Law 116-136, § 18115(a), the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Citation of rules affected by this order:

New: WAC 246-101-017
Repealed: None
Amended: None
Suspended: None

Statutory authority for adoption: RCW 43.20.050(2)(f)

Other authority: None

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The immediate adoption of a rule to designate COVID-19 as a notifiable condition, and require the reporting of demographic, testing, and other relevant data by health care providers, health care facilities, laboratories, local health jurisdictions, and the Department of Agriculture for each COVID-19 test is necessary to comply with federal law and related guidance. Immediate adoption of this rule is necessary for the preservation of the public health, safety and general welfare of the State of Washington during the global COVID-19 pandemic.

The CARES Act requires "every laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19" to report the results from each such test to the Secretary of the U.S. Department of Health and Human Services (HHS). The Act authorizes the HHS Secretary to prescribe the form, manner, timing, and frequency of such reporting. The HHS Secretary released laboratory data reporting guidance for COVID-19 on June 4, 2020, and later updated the guidance on January 8, 2021, and March 8, 2022. The guidance requires all COVID-19 test results and accompanying data be reported through existing state, territorial, local, and Tribal public health data reporting methods. Of these requirements, any person or entity ordering a test, registering an individual to be tested, collecting a specimen, or performing a test should make every reasonable effort to collect complete demographic data of the patient (e.g., ethnicity, race, age, sex). Updated guidance specifies which test results must be reported by entities based on entity and test type, and refines the list of reportable data components that must accompany test results.

In September 2020, the Centers for Medicare and Medicaid Services (CMS) published an interim final rule in Federal Register 54826, Volume 85, Number 171, to update requirements for reporting SARS-CoV-2 test results by laboratories. The interim final rule states all laboratories conducting SARS-CoV-2 testing and reporting patient-specific results, including hospital laboratories, nursing homes, and other facilities conducting testing for COVID-19, who fail to report information required under the CARES Act will be subject to monetary penalties. The interim final rules became effective September 2, 2020.

Adoption of a ninth emergency rule ensures continued compliance with the CARES Act, including updated HHS guidance, CMS requirements, and maintain the necessary public health response to COVID-19.

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	1	Amended	0	Repealed	0
Federal rules or standards:	New	1	Amended	0	Repealed	0
Recently enacted state statutes:	New	0	Amended	0	Repealed	0

The number of sections adopted at the request of a nongovernmental entity:

	New	1	Amended	0	Repealed	0

The number of sections adopted on the agency's own initiative:

	New	1	Amended	0	Repealed	0

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	0	Amended	0	Repealed	0

The number of sections adopted using:

Negotiated rule making:	New	0	Amended	0	Repealed	0
Pilot rule making:	New	0	Amended	0	Repealed	0
Other alternative rule making:	New	1	Amended	0	Repealed	0

Date Adopted: 11/09/2022

Name: Michelle A. Davis

Title: Executive Director, Washington State Board of Health

Signature:

NEW SECTION

WAC 246-101-017 Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. (1) Designating coronavirus disease 2019 (COVID-19), and the novel coronavirus (SARS-CoV-2) that causes it, as a notifiable condition, and requiring the reporting of race and ethnicity and other essential data by health care providers, health care facilities, laboratories, and local health departments related to cases of COVID-19 are necessary to ensure that public health agencies receive complete notice of COVID-19 cases and to address racial and ethnic inequities in morbidity and mortality among individuals with the disease. This rule is also necessary to align with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and the U.S. Department of Health and Human Services laboratory data reporting requirements for COVID-19 testing, which require reporting of COVID-19 data to the appropriate state or local health department and the U.S. Department of Health and Human Services, and further, that any person or entity ordering a diagnostic or serologic test, collecting a specimen, or performing a test should make every reasonable effort to collect complete demographic information and include such data when ordering a laboratory test to enable the entities performing the test to report these data to state, territorial, local, and tribal public health departments. During this global pandemic, immediate adoption of a rule requiring notice of novel coronavirus (SARS-CoV-2) as a notifiable condition and reporting of race, ethnicity, and other essential data is necessary for the preservation of public health, safety, and general welfare.

(2) For the purpose of this section:

(a) "Animal case" means an animal, alive or dead, with a diagnosis of novel coronavirus (SARS-CoV-2) made by a veterinarian licensed under chapter 18.92 RCW, veterinary medical facility licensed under chapter 18.92 RCW, or veterinary laboratory as defined under chapter 16.70 RCW based on clinical criteria, or laboratory criteria, or both.

(b) "Antigen test" means an immunoassay test that detects the presence or absence of SARS-CoV-2 protein to indicate current SARS-CoV-2 infection.

(c) "Business day" means any day that the department is open for business.

(d) "Health care facility" means:

(i) Any assisted living facility licensed under chapter 18.20 RCW; birthing center licensed under chapter 18.46 RCW; nursing home licensed under chapter 18.51 RCW; hospital licensed under chapter 70.41 RCW; adult family home licensed under chapter 70.128 RCW; ambulatory surgical facility licensed under chapter 70.230 RCW; private establishment licensed under chapter 71.12 RCW; or enhanced service facility licensed under chapter 70.97 RCW; and

(ii) Clinics or other settings where one or more health care providers practice.

(e) "Immediately" means without delay, twenty-four hours a day, seven days a week.

(f) "Nucleic acid amplification test" or "NAAT" means a viral diagnostic test including reverse transcription polymerase chain reaction (RT-PCR), transcription mediated amplification (TMA), loop-mediated isothermal amplification (LAMP), strand displacement amplifications (SDA), and other NAATs authorized for emergency use by the U.S. Food and Drug Administration for the detection for SARS-CoV-2.

(g) "Reference laboratory" means a laboratory licensed inside or outside of Washington state that receives a specimen from another licensed laboratory and performs one or more tests on that specimen.

(h) "Secure electronic data transmission" means electronic communication and accounts developed and maintained to prevent unauthorized access, loss, or compromise of sensitive information including, but not limited to, secure file transfer, secure facsimile, a health information exchange authorized under RCW 41.05.039, and the secure electronic disease surveillance system.

(i) "Secure electronic disease surveillance system" means the secure electronic data transmission system maintained by the department and used by local health departments to submit notifications, investigation reports, and outbreak reports under this chapter.

(j) "Waived test" has the same meaning as WAC 246-338-010 (45)(b).

(k) Patient's ethnicity shall be identified by the patient and reported using one of the following categories:

(i) Hispanic or Latino;

(ii) Non-Hispanic or Latino;

(iii) Unknown; or

(iv) Asked, but unknown.

(l) Patient's race shall be identified by the patient and reported using one or more of the following categories:

(i) American Indian or Alaska Native;

(ii) Asian;

(iii) Black or African American;

(iv) Native Hawaiian or Other Pacific Islander;

(v) White;

(vi) Unknown; or

(vii) Asked, but unknown.

(3) Unless a health care facility has assumed the notification duties of the principal health care provider under subsection (7) of this section, or a laboratory director in a health care facility where laboratory point-of-care testing occurs under a certificate of waiver as described in WAC 246-338-020 has fulfilled the laboratory notification requirements as described in subsection (9) of this section, the principal health care provider shall submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within 24 hours of receiving a laboratory confirmed positive test result; and

(b) Following the requirements of this section, WAC 246-101-105, and WAC 246-101-120; excluding the requirements in WAC 246-101-105(10).

(4) The local health officer may waive or partially waive subsection (3) or (5) of this section, or both if the local health officer determines individual case reports of novel coronavirus (SARS-CoV-2) submitted by health care providers or health care facilities are not needed and are not promoting public health for any reason including, but not limited to, the local health department being unable to process the volume of case reports. The local health officer shall notify health care providers and health care facilities upon their determination.

(5) A health care facility shall submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department via

secure electronic data transmission using a file format or template specified by the department:

(a) Within 24 hours of receiving a laboratory confirmed positive test result; and

(b) Following the requirements of this section, WAC 246-101-305, and WAC 246-101-320; excluding the requirement in WAC 246-101-305(4).

(6) Health care providers and health care facilities shall provide the local health department with the information identified in Column A of Table 1 in this section for individual case reports concerning novel coronavirus (SARS-CoV-2).

(7) A health care facility may assume the notification requirements established in this section for a health care provider practicing within the health care facility.

(8) A health care facility shall not assume the notification requirements established in this section for a laboratory that is a component of the health care facility.

(9) A principal health care provider is not required to submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department when the provider practices in a health care facility where laboratory point-of-care testing occurs under a certificate of waiver as described in WAC 246-338-020 and the laboratory director has fulfilled the laboratory notification requirements under subsections (12), (13), and (14) of this section.

(10) Health care providers and health care facilities shall provide the laboratory with the information identified in Column A of Table 1 in this section for each test ordered for novel coronavirus (SARS-CoV-2).

(11) For specimens associated with novel coronavirus (SARS-CoV-2) sent to a laboratory outside of Washington state, health care providers, health care facilities, and laboratories shall provide the out-of-state laboratory with a copy of chapter 246-101 WAC if they arrange for the out-of-state laboratory to report the test results consistent with WAC 246-101-105 (5)(a), 246-101-205 (1)(f)(i), or 246-101-305 (1)(e)(i) to the local health department as required under this subsection.

(12) For laboratories licensed to conduct moderate or high complexity testing, the laboratory director shall submit individual laboratory reports of positive, negative, and inconclusive test results from all NAAT and antigen tests performed for novel coronavirus (SARS-CoV-2) to the local health department:

(a) Via secure electronic data transmission using a file format or template specified by the department;

(b) Within 24 hours of results being known or determined; and

(c) Following the requirements of this section, WAC 246-101-205, and WAC 246-101-230; excluding the requirements in WAC 246-101-205(3).

(13) For laboratories licensed to conduct waived tests under a certificate of waiver, a laboratory director shall submit individual laboratory reports of positive test results from all waived tests, excluding antibody testing, for novel coronavirus (SARS-CoV-2) to the local health department:

(a) Via secure electronic data transmission using a file format or template specified by the department;

(b) Within 24 hours of results being known or determined; and

(c) Following the requirements of this section, WAC 246-101-205, and 246-101-230; excluding the requirements in WAC 246-101-205(3).

(14) A laboratory director shall provide the information identified in Column B of Table 1 in this section to the local health department with each novel coronavirus (SARS-CoV-2) laboratory report.

(15) A laboratory director, upon request by the local health department or the department, shall submit novel coronavirus (SARS-CoV-2) presumptive positive isolates or, if no isolate is available, the specimen associated with the presumptive positive result to the Washington state public health laboratories within two business days of request. Specimens shall be sent to:

Washington State Public Health Laboratories
Washington State Department of Health
1610 N.E. 150th Street
Shoreline, WA 98155

(16) If the local health department or the department requests a specimen under subsection (15) of this section, a laboratory director shall provide the Washington state public health laboratories with the information identified in Column C of Table 1 in this section with each specimen submitted.

(17) When referring a specimen to another laboratory for a test for novel coronavirus (SARS-CoV-2), a laboratory director shall provide the reference laboratory with the information identified in Column D of Table 1 in this section for each test referral.

(18) The department of agriculture shall submit individual case reports for each animal case of novel coronavirus (SARS-CoV-2) to the department via secure electronic data transmission using a file format or template specified by the department within twenty-four hours of being notified of the animal case.

(19) The department of agriculture shall call the department and confirm receipt immediately after submitting a case report for each animal case of novel coronavirus (SARS-CoV-2).

(20) When the department of agriculture submits information under subsection (18) of this section, the department shall:

(a) Consult with the department of agriculture on all animal cases; and

(b) Notify the local health department of animal cases submitted to the department.

(21) A local health department shall, using a secure electronic disease surveillance system:

(a) Notify the department within one business day upon receiving a case, laboratory, or animal case report of positive test results, excluding antibody testing, for novel coronavirus (SARS-CoV-2); and

(b) Notify the department within five business days upon receiving a laboratory report of negative or inconclusive test results for novel coronavirus (SARS-CoV-2); and

(c) Submit individual investigation reports of novel coronavirus (SARS-CoV-2) to the department within one business day upon completing the case investigation.

(22) Notifications required under subsection (21)(a) and (b) of this section must include the information identified in Column E of Table 1 in this section.

(23) Investigation reports required under subsection (21)(c) of this section must include the information identified in Column F of Table 1 in this section.

(24) A local health department shall, within one business day, reassign cases to the department upon determining the patient who is the subject of the case:

(a) Is a resident of another local health department; or

(b) Resides outside Washington state.

(25) A local health department, upon consultation with the department, may forward novel coronavirus (SARS-CoV-2) individual laboratory or case reports submitted by laboratories, health care providers, and health care facilities to the department for data entry and processing.

(26) The local health officer or the state health officer may request additional information of epidemiological or public health value when conducting a case investigation or otherwise for prevention and control of a specific notifiable condition.

(27) Health care providers, health care facilities, laboratories, and the department of agriculture may provide, via secure electronic data transmission using a file format or template specified by the department, additional health information, demographic information, or infectious or noninfectious condition information than is required under this section to the department, local health department, or both when it determines that the additional information will aid the public health authority in protecting the public's health and preventing the spread of novel coronavirus (SARS-CoV-2).

Table 1
Required Reporting for Health Care Providers, Health Care Facilities, Laboratories, and Local Health Departments

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	**Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:**	**Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:**	**Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:**	**Column E: Local health department notifications to the department must include:**	**Column F: Local health department investigation reports to the department must include:**
Patient's name (last name, first name, middle initial)	X	X	X	X	X	X
Patient's street address, including residence zip code and county	X	X	X	X	X	X
Patient's telephone number with area code	X	X	X	X	X	X
Patient's age and date of birth	X	X	X	X	X	X
Patient's ethnicity, using the categories described in subsection (2)(k) of this section	X	X	X	X	X	X

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	**Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:**	**Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:**	**Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:**	**Column E: Local health department notifications to the department must include:**	**Column F: Local health department investigation reports to the department must include:**
Patient's race, using the categories described in subsection (2)(l) of this section	X	X	X	X	X	X
Patient's sex	X	X	X	X	X	X
Test ordered, performed, and resulted, using appropriate LOINC codes as defined by the Laboratory in Vitro Diagnostics (LIVD) Test Code Mapping for SARS-CoV-2 tests provided by the CDC		X	X	X	X*	X*
Test result (values) using appropriate SNOMED-CT codes as defined by the LIVD Test Code Mapping for SARS-CoV-2 tests provided by the CDC		X	X	X	X*	X*
Test result date (date format)		X	X		X*	X*
Device identifier		X	X		X*	X*
Accession number or specimen ID		X	X		X*	X*
Date of specimen collection (date format)	X	X	X	X	X	X
Specimen source, using appropriate SNOMED-CT, SPM4 codes, or equivalently detailed alternative codes		X	X	X	X*	X*
Ordering organization or health care provider's name	X	X	X	X	X	X

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	**Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:**	**Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:**	**Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:**	**Column E: Local health department notifications to the department must include:**	**Column F: Local health department investigation reports to the department must include:**
Ordering organization or health care provider's National Provider Identifier (as applicable) and affiliated organization (specific facility)	X	X	X	X	X	X
Ordering organization or health care provider's telephone number	X	X	X	X	X	X
Ordering organization or health care provider's address including zip code	X	X	X	X	X	X
Performing laboratory or facility name and CLIA number		X	X		X*	X*
Performing laboratory or facility address including zip code		X	X		X*	X*
Performing laboratory or facility phone number		X	X		X*	X*
Reporting entity name and CLIA number (or appropriate ID)		X	X	X	X*	X*
Reporting entity address including zip code		X	X	X	X*	X*
Reporting entity phone number		X	X	X	X*	X*
Name and telephone number of the person providing the report	X					
Patient's notifiable condition	X				X	X
Patient's diagnosis of disease or condition	X					
Date specimen received by reporting laboratory		X	X		X*	X*

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	**Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:**	**Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:**	**Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:**	**Column E: Local health department notifications to the department must include:**	**Column F: Local health department investigation reports to the department must include:**
Type of specimen tested	X	X	X	X	X*	X*
Pertinent laboratory data	X					
Initial notification source					X	X
Date local health department was notified						X
Condition symptom onset date (preferred), or alternatively, diagnosis date						X
Hospitalization status of the patient						X
Whether the patient died during this illness						X
Source or suspected source						X

* Local health departments are not required to submit this information if the notification came from a health care provider or health care facility. All other information indicated in Columns E and F is still required in these instances.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

December 29, 2022

TO: Kathleen Buchli
Code Reviser

FROM: Tami Thompson
Regulatory Affairs Manager

SUBJECT: RESCISSION OF WSR 23-01-081, CR-103E for WAC 246-101-017, Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting, effective January 1, 2023

This memo serves as notice that the State Board of Health (Board) is rescinding the CR-103E for WAC 246-101-017, Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting, which was filed December 16, 2022, and published in WSR 23-01-081. Rescission is effective January 1, 2023.

This emergency rule, establishing WAC 246-101-017, designates COVID-19 as a notifiable condition and requires health care providers, health care facilities, laboratories and point-of-care test sites, local health jurisdictions, and the Department of Agriculture to report essential testing data, patient demographic details, and additional information with each COVID-19 test. The emergency rule is intended to facilitate the flow of information through existing state and local reporting channels to fulfill the requirements of the Coronavirus Aid, Relief, and Economic Security Act, guidance from the U.S. Department of Health and Human Services, as well as requirements from the Centers for Medicare and Medicaid Services.

In March 2021, the Board adopted numerous revisions to chapter 246-101 WAC, Notifiable Conditions. Of these revisions, COVID-19 is designated as a notifiable condition and requires timely reporting of cases by regulated entities under the chapter. These revisions go into effect January 1, 2023.

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 29, 2022
TIME: 10:05 AM

WSR 23-02-038

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

The Board is rescinding the emergency rule filed as WSR 23-01-081 to reduce redundancy and clarify reporting requirements for COVID-19 in Washington state.

Individuals requiring information on this rule should contact Kaitlyn Campbell, State Board of Health Policy Advisor, at kaitlyn.campbell@sboh.wa.gov or (360) 584-6737. Thank you for your attention to this matter.

cc: Michelle Davis, State Board of Health Executive Director
Keith Grellner, State Board of Health Chair
Kaitlyn Campbell, State Board of Health Policy Advisor

Department of Health Updates

Washington State Department of Health

www.doh.wa.gov

State Board of Health Meeting

Monday, January 9th, 2023

@WaDeptHealth
@WaHealthSec
@Ushahmd

Speakers

Public Health Updates

Tao Sheng Kwan-Gett, MD, MPH

Chief Science Officer

Notifiable Conditions Modernization

Alexandra Montaño, MPH

Director, Policy and Legislative Relations
Disease Control and Health Statistics

What is Public Health?

"What we as a society do ***collectively*** to assure the conditions in which people can be healthy."

- The future of the Public's Health in the 21st Century, Institute of Medicine, 2003


Health
Where Equity,
Innovation and
Engagement meet

Mpox

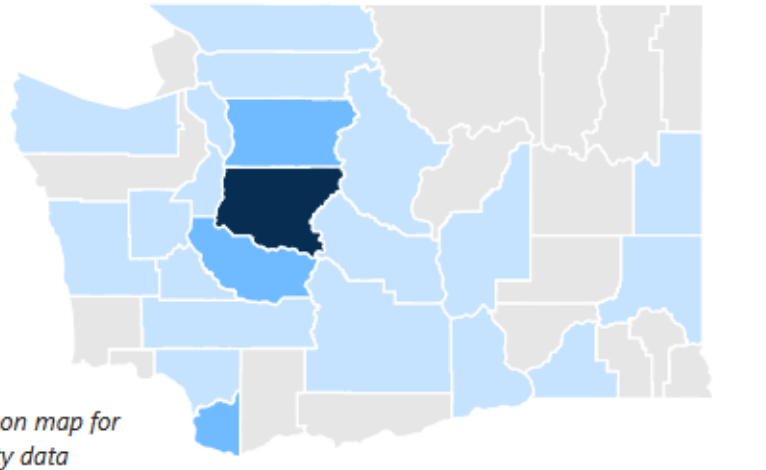
Mpox in Washington State

State Summary

647 TOTAL CASES | **18** TOTAL HOSPITALIZATIONS | **0** TOTAL DEATHS

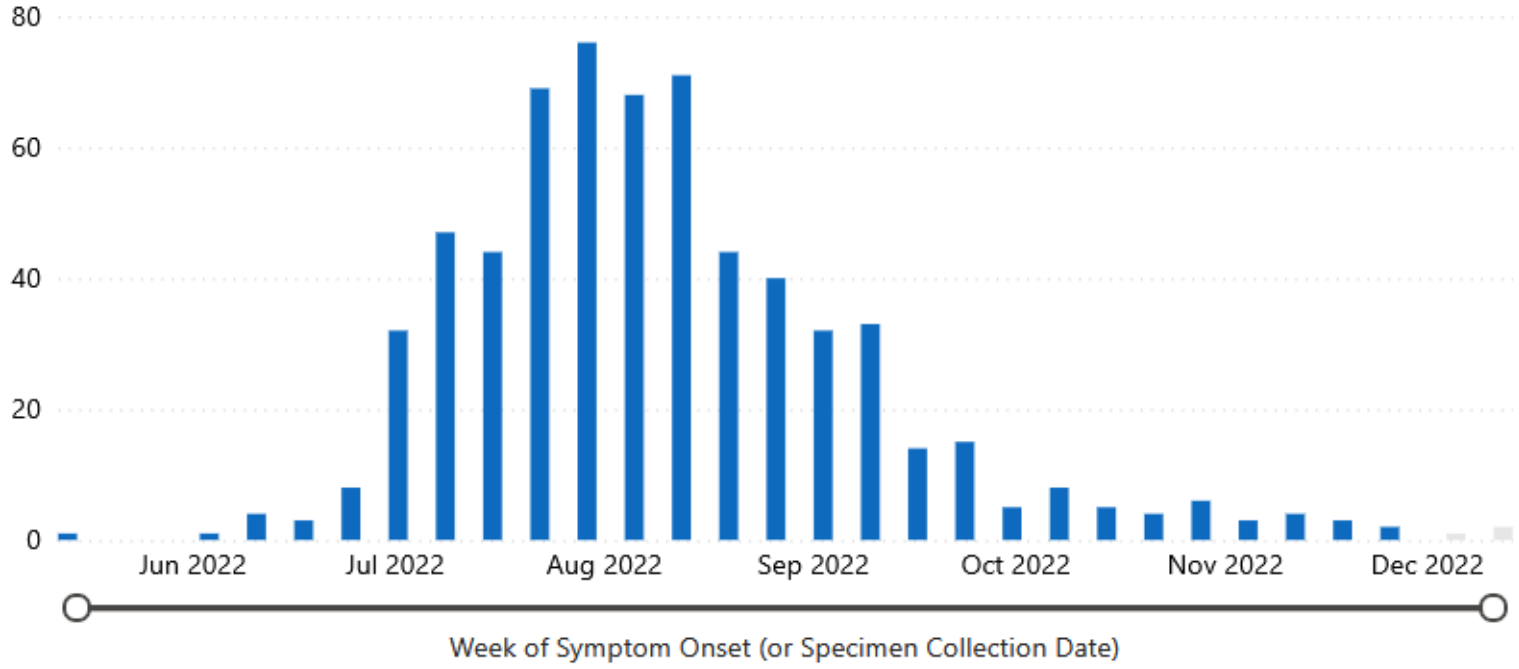
Map View ◯ Table View

TOTAL CASES



0 of the 647 total cases do not have an assigned county.

TOTAL WEEKLY CASE COUNTS



Week of Symptom Onset (or Specimen Collection Date)

Less then 10 of the 647 cases do not have a symptom onset or specimen collection date.

Source: DOH MPOX data dashboard https://doh.wa.gov/you-and-your-family/illness-and-disease-z/monkeypox/monkeypox-mpv-data (12/27/2022)

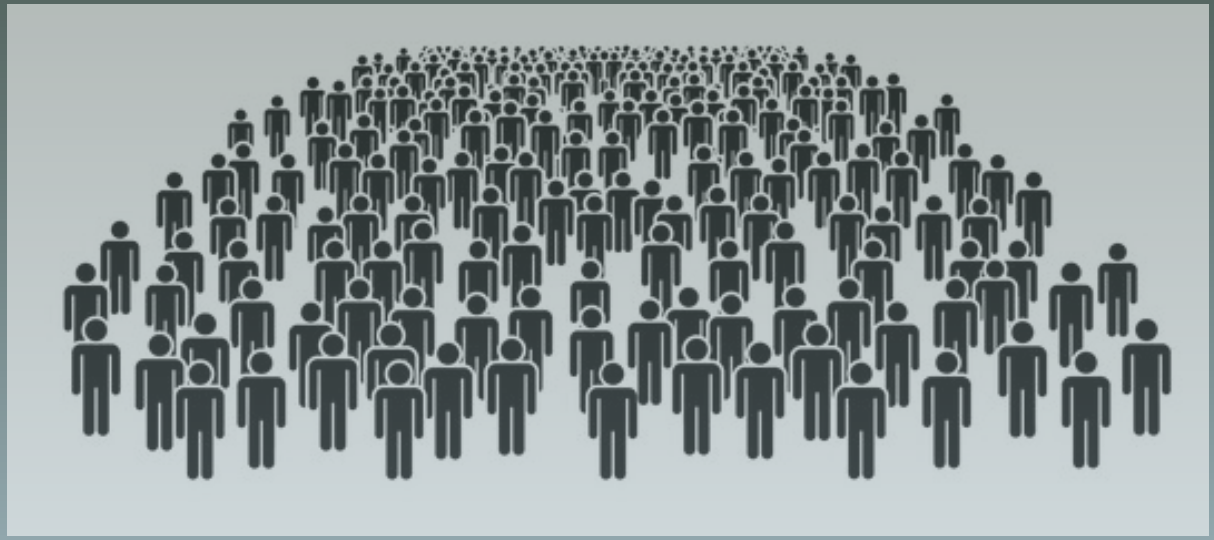
Washington State Department of Health

@WaDeptHealth
@WaHealthSec
@Ushahmd

Mpox Vaccinations

Nearly 29,474 MPV vaccines administered!

10,443 people fully vaccinated

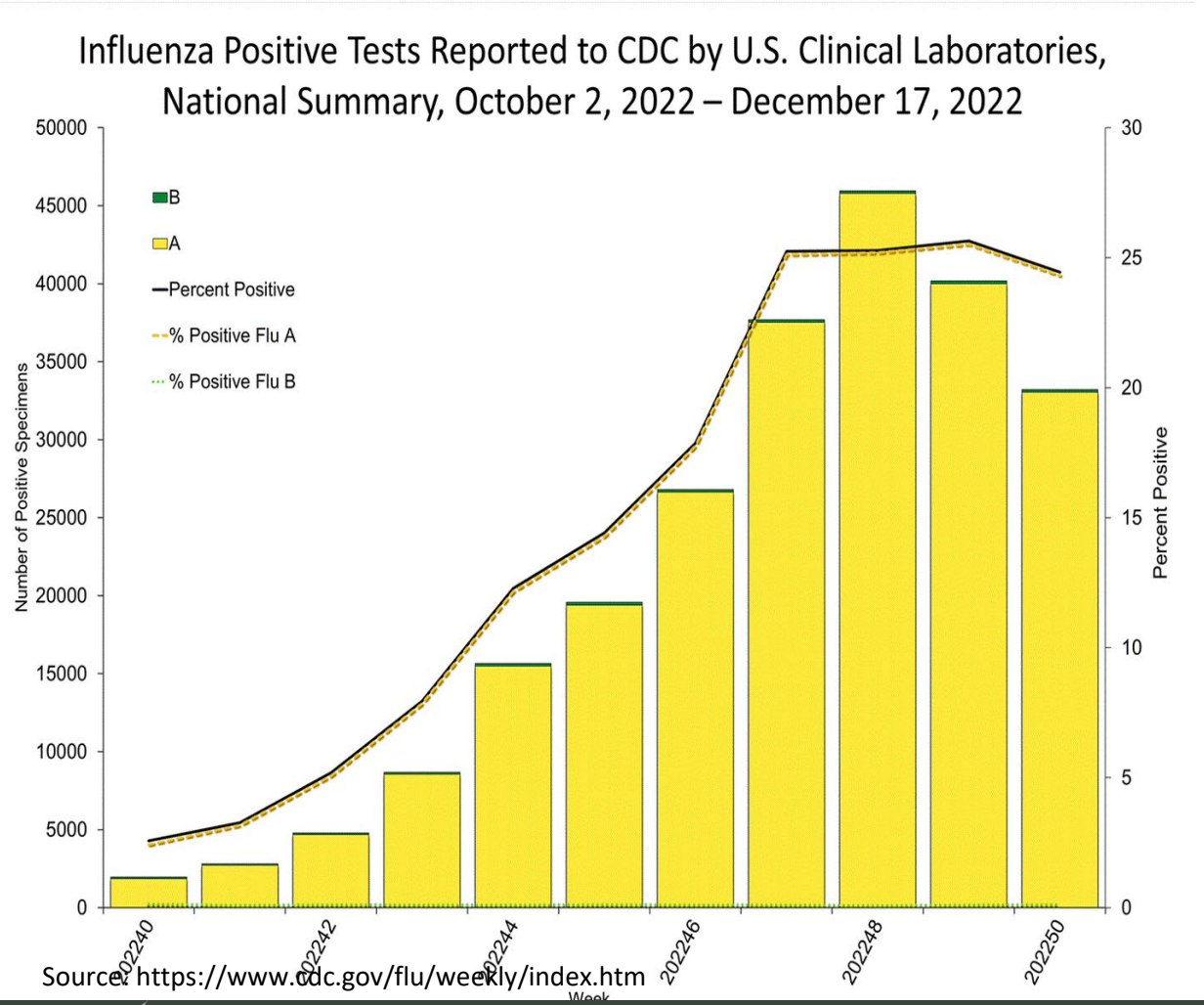


Washington State Department of Health

@WaDeptHealth
@WaHealthSec
@Ushahmd

Influenza and RSV

Concern for Flu / Respiratory Disease



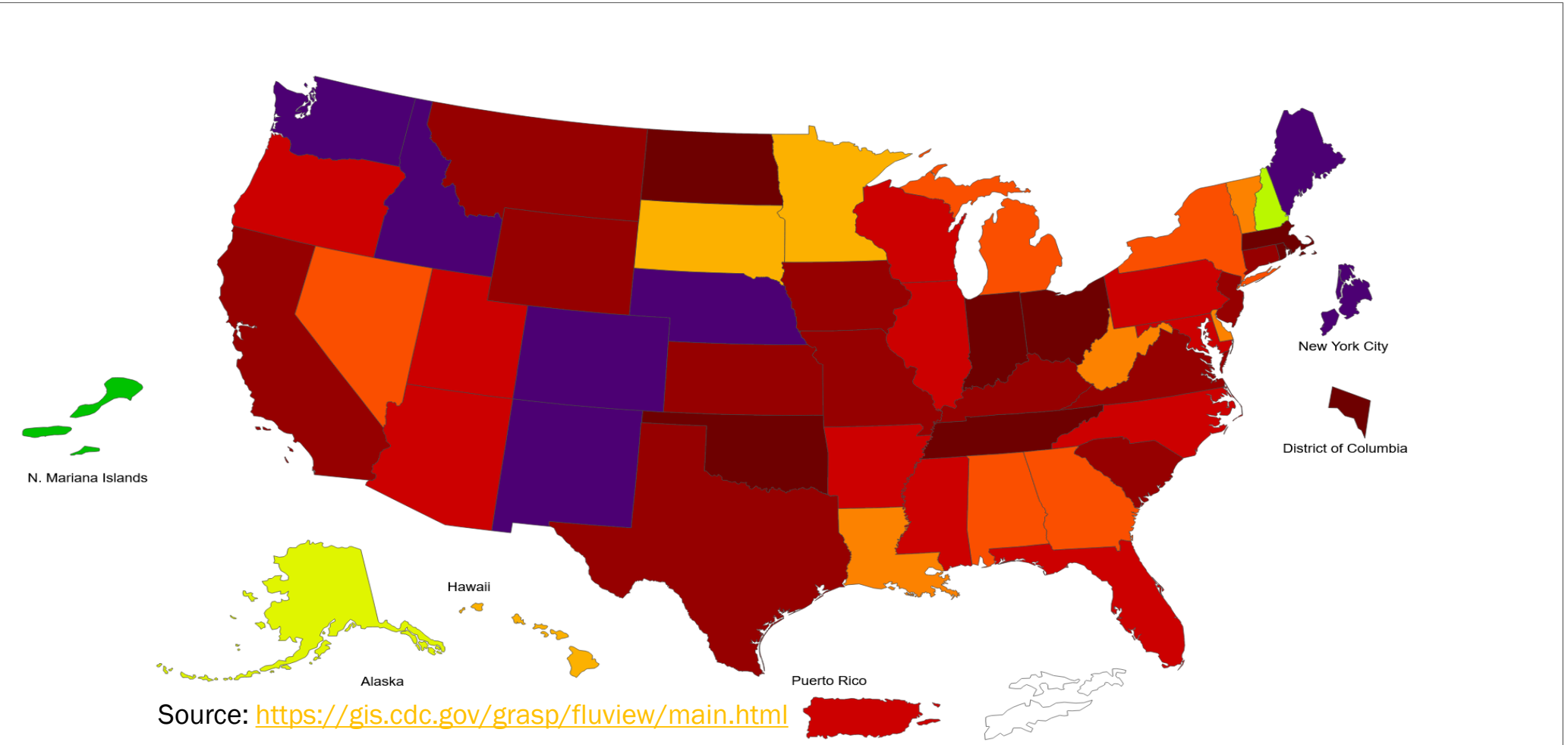
Source: https://www.cdc.gov/flu/weekly/index.htm

A 'Tripledemic'? Flu, R.S.V. and Covid May Collide This Winter, Experts Say

Flu cases are higher than usual for this time of year and are expected to soar in the coming weeks. Another virus, R.S.V., already is straining pediatric hospitals in some states.

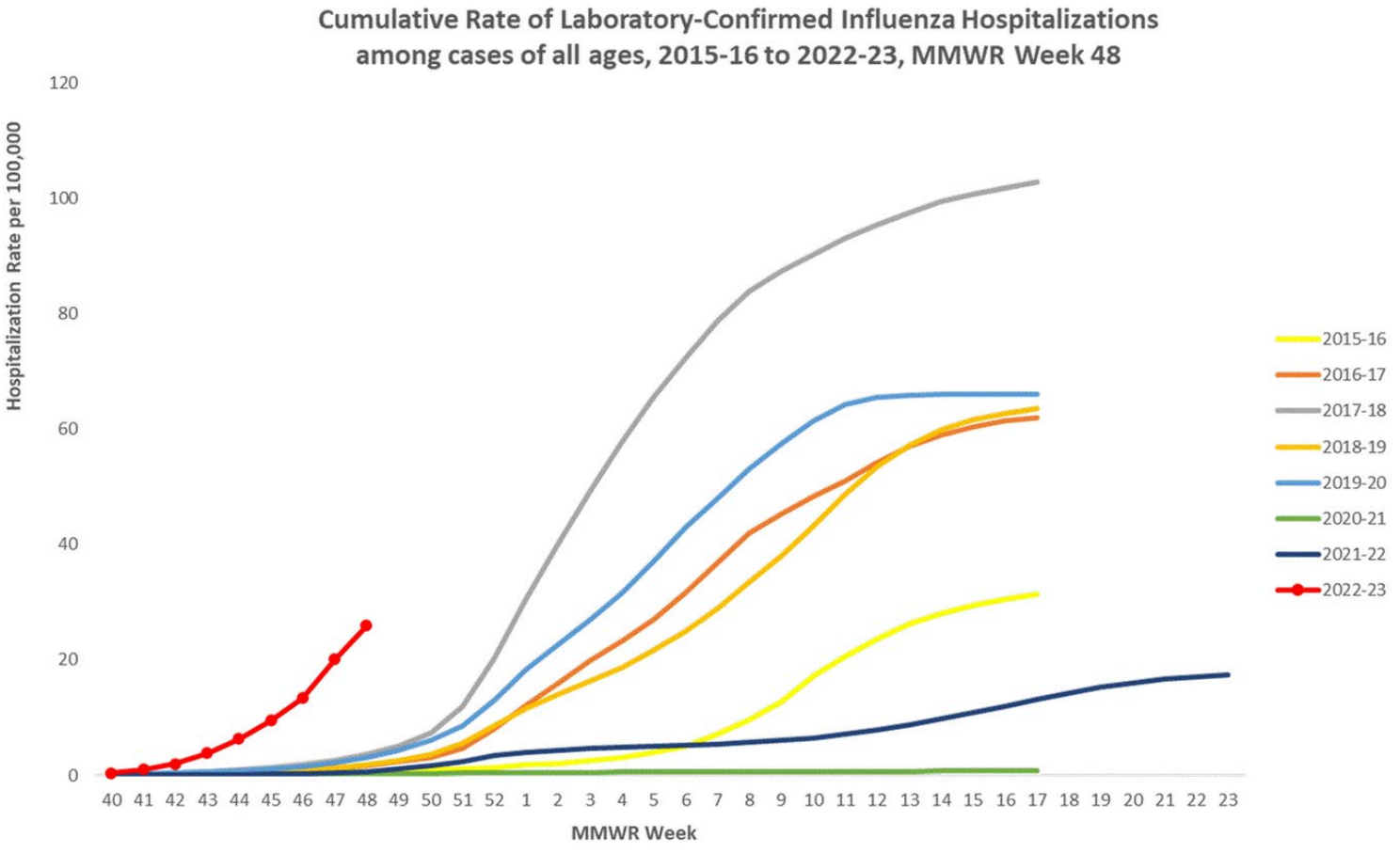
U.S. Influenza Activity

2022-23 Influenza Season Week 50 ending Dec 17, 2022



Source: https://gis.cdc.gov/grasp/fluview/main.html

U.S. Influenza Hospitalizations

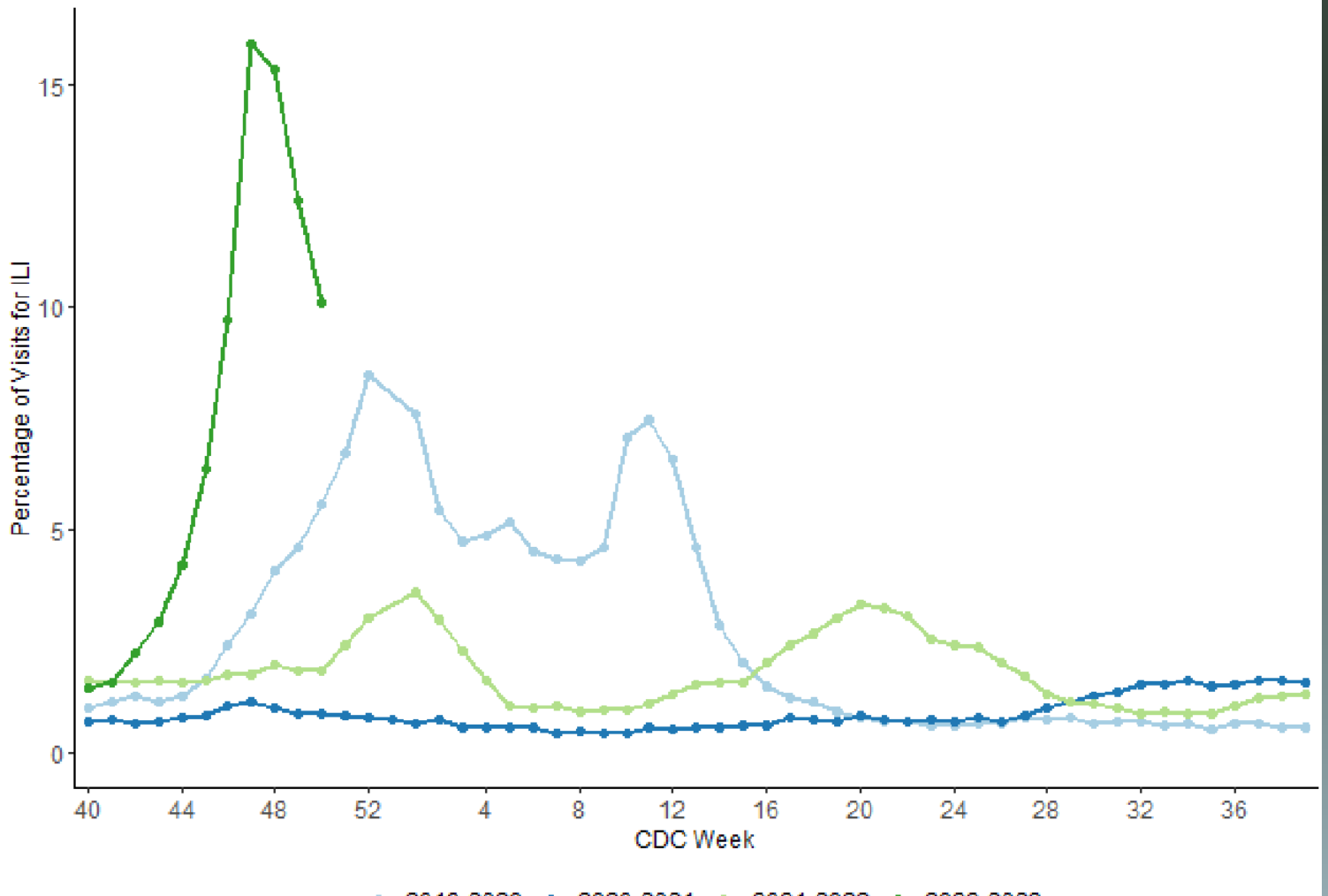


**In this figure, weekly rates for all seasons prior to the 2022-23 season reflect end-of-season rates. For the 2022-23 season, rates for recent hospital admissions are subject to reporting delays. As hospitalization data are received each week, prior case counts and rates are updated accordingly.

Source: https://gis.cdc.gov/grasp/fluview/fluhosprates.html

Washington State Influenza Hospitalizations

Figure 4: Syndromic Surveillance, Percentage of Hospital Visits for a Chief Complaint of ILI, or Discharge Diagnosis of Influenza, by CDC Week, Washington, 2019-2023



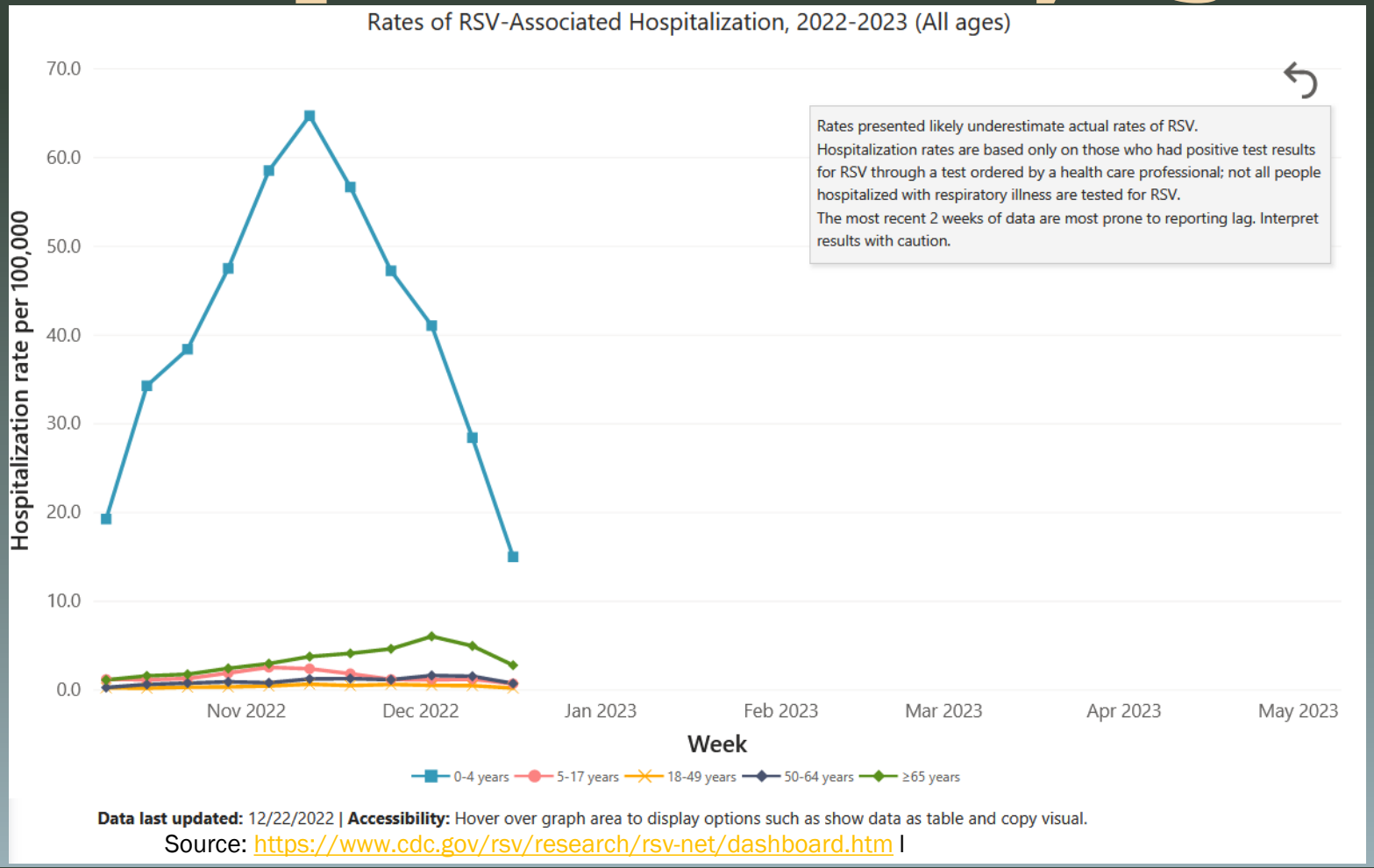
https://doh.wa.gov/sites/default/files/filefield_paths/420-100-FluUpdate.pdf?uid=639bb9a36293b

RSV (Respiratory Syncytial Virus)

- **RSV commonly circulates in late fall and winter**
- **Children and adults who catch RSV often develop cold like symptoms**
- **RSV can be more serious for infants, older individuals, and immunocompromised**

Source: CDC RSV: https://www.cdc.gov/dotw/rsv/index.html#:~:text=Respiratory%20syncytial%20virus%20(RSV)%20is,similar%20to%20the%20common%20cold

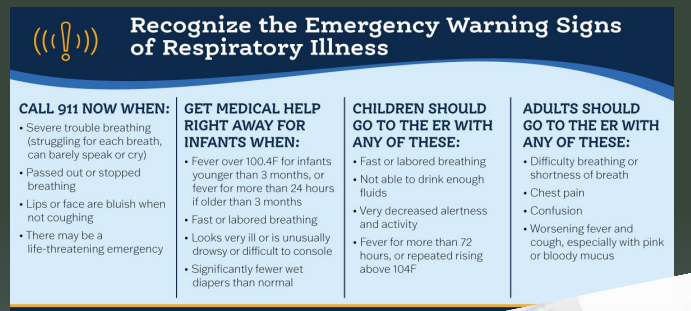
U.S. Weekly Rates of RSV-Associated Hospitalizations by Age

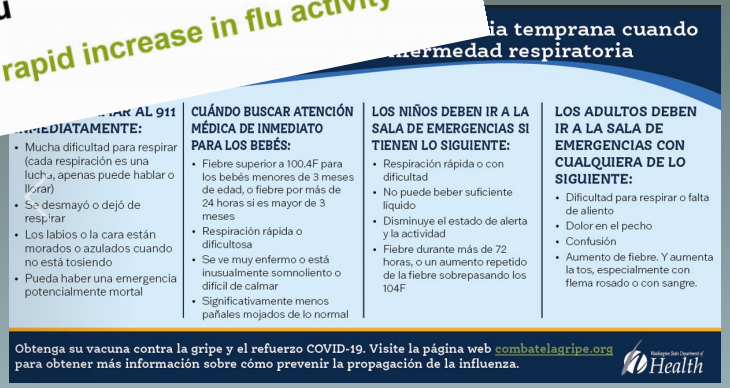


Source: https://www.cdc.gov/rsv/research/rsv-net/dashboard.htm |

Respiratory Disease Response

- Health Systems Support
- Health Coalition Coordination
- Media/Public Messaging
- Evaluating Agency Regulatory Flexibility





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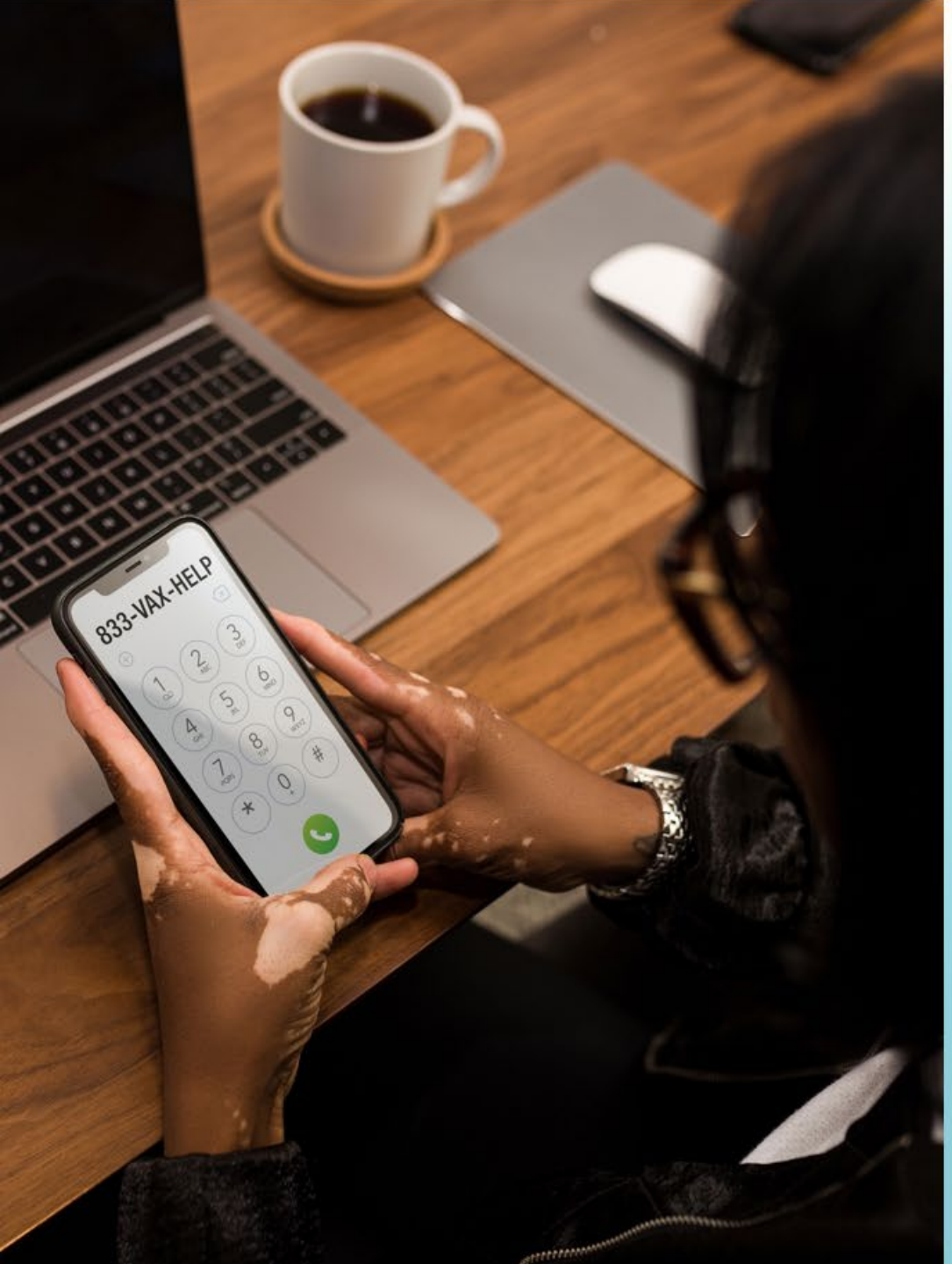


Need to make a vaccine appointment?

Visit

VaccineLocator.doh.wa.gov

or **Vaccines.gov**

or call

833-VAX-HELP

Language assistance is available

6 a.m. to 10 p.m.
Monday

6 a.m. to 6 p.m.
Tuesday – Sunday
& observed state holidays

Vaccinate WA

CovidVaccineWA.org

COVID-19

COVID-19 Washington Snapshot

State Summary

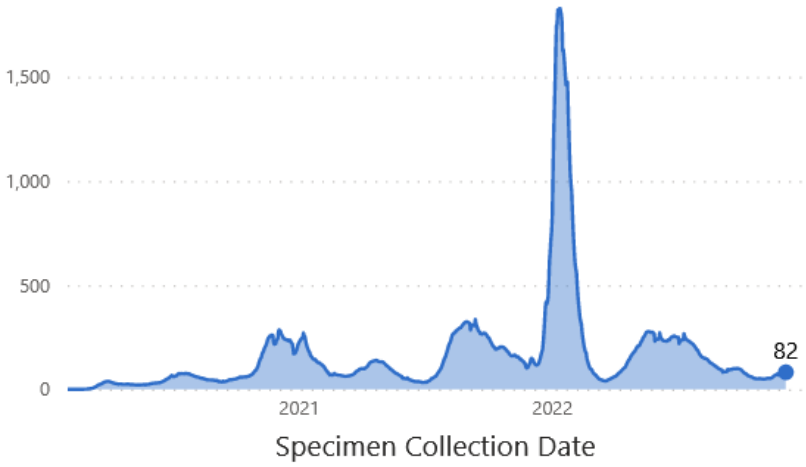
82 CASES PER 100,000 POPULATION

8% OF HOSPITAL BEDS OCCUPIED BY COVID-19 PATIENTS

70% OF POPULATION COMPLETING PRIMARY SERIES

Low Moderate Substantial High

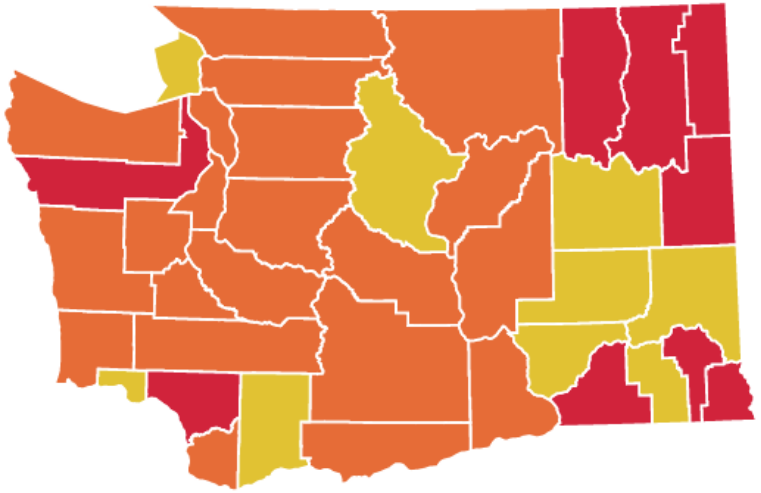
TREND IN 7-DAY RATE OF NEW COVID-19 CASES PER 100,000 POPULATION



Cases from the last 8 days are not reported
Hospital bed occupancy is reported only at the state level

7-DAY CASE RATE PER 100,000 POPULATION

Measurement Period: 11/28/2022-12/5/2022



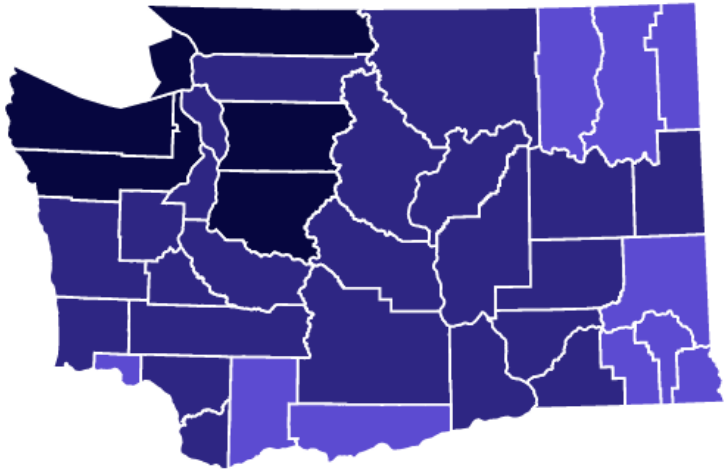
Click on the map for county data

0-9.99 10-49.99 50-99.99 100+

0 cases in the measurement period do not have an assigned county

TOTAL POPULATION COMPLETING PRIMARY VACCINATION SERIES

Measurement Period: 12/15/2020-12/12/2022



Click on the map for county data

Zero 0-18% 18%-35% 35%-53% 53%-70% 70%+

61,562 people completing the primary vaccination series do not have a county reported

Washington State Department of Health

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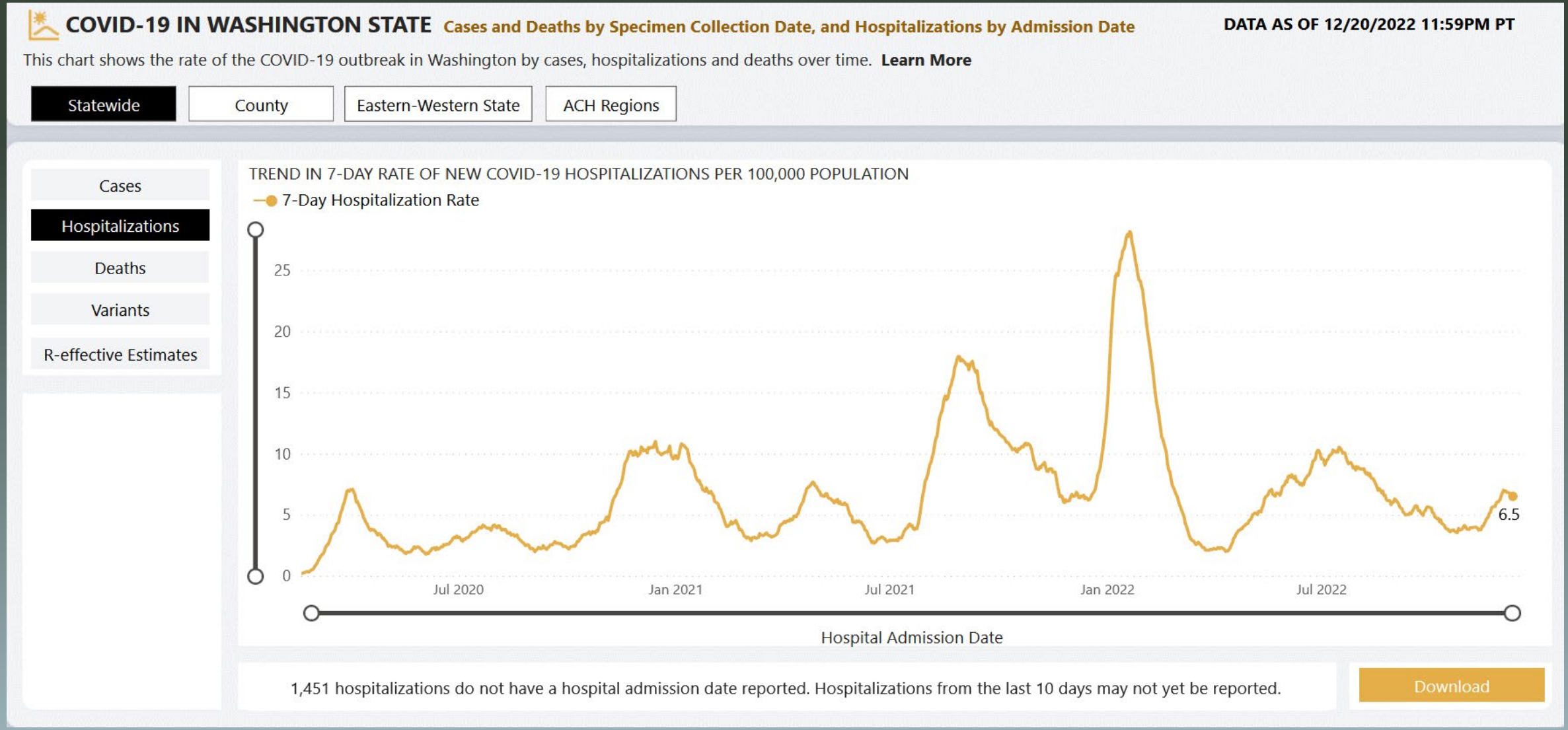
COVID-19 Hospitalizations in WA



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COVID-19 Deaths in WA

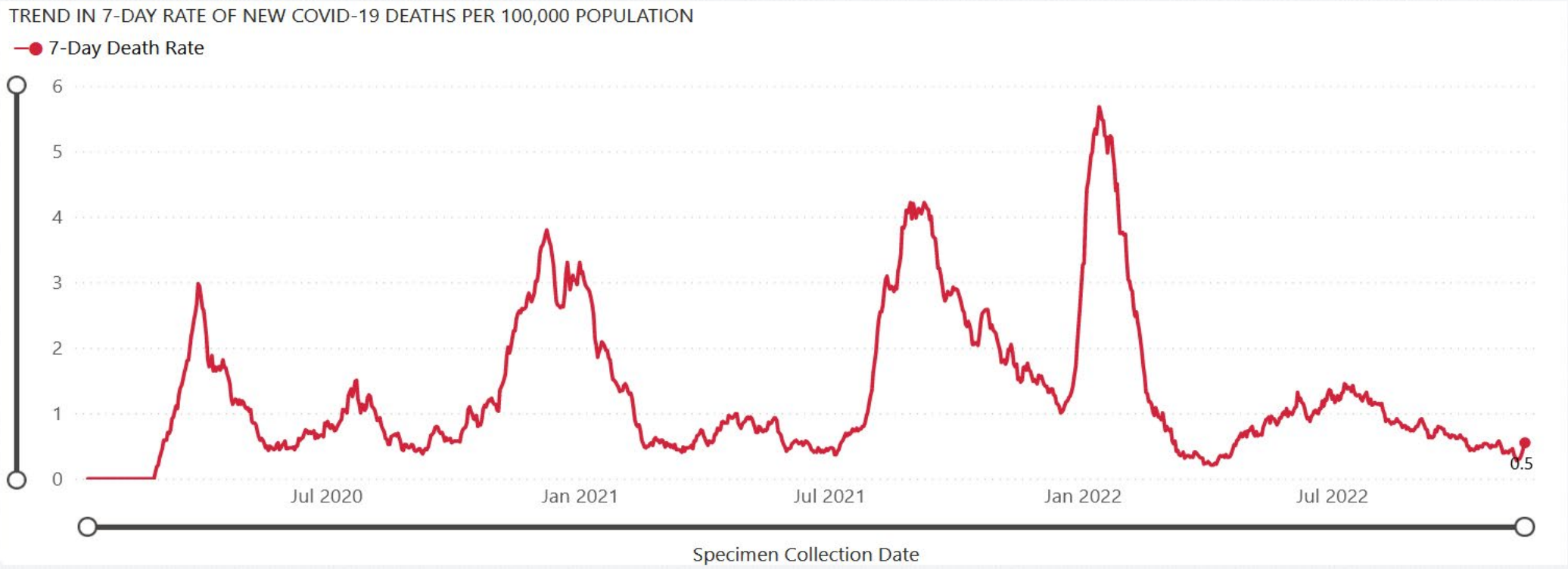
COVID-19 IN WASHINGTON STATE Cases and Deaths by Specimen Collection Date, and Hospitalizations by Admission Date

DATA AS OF 12/20/2022 11:59PM PT

This chart shows the rate of the COVID-19 outbreak in Washington by cases, hospitalizations and deaths over time. **Learn More**

Statewide | County | Eastern-Western State | ACH Regions

Cases
Hospitalizations
Deaths
Variants
R-effective Estimates



6 of 14,991 deaths do not have an assigned county. Deaths from the last 31 days may not yet be reported.

Download

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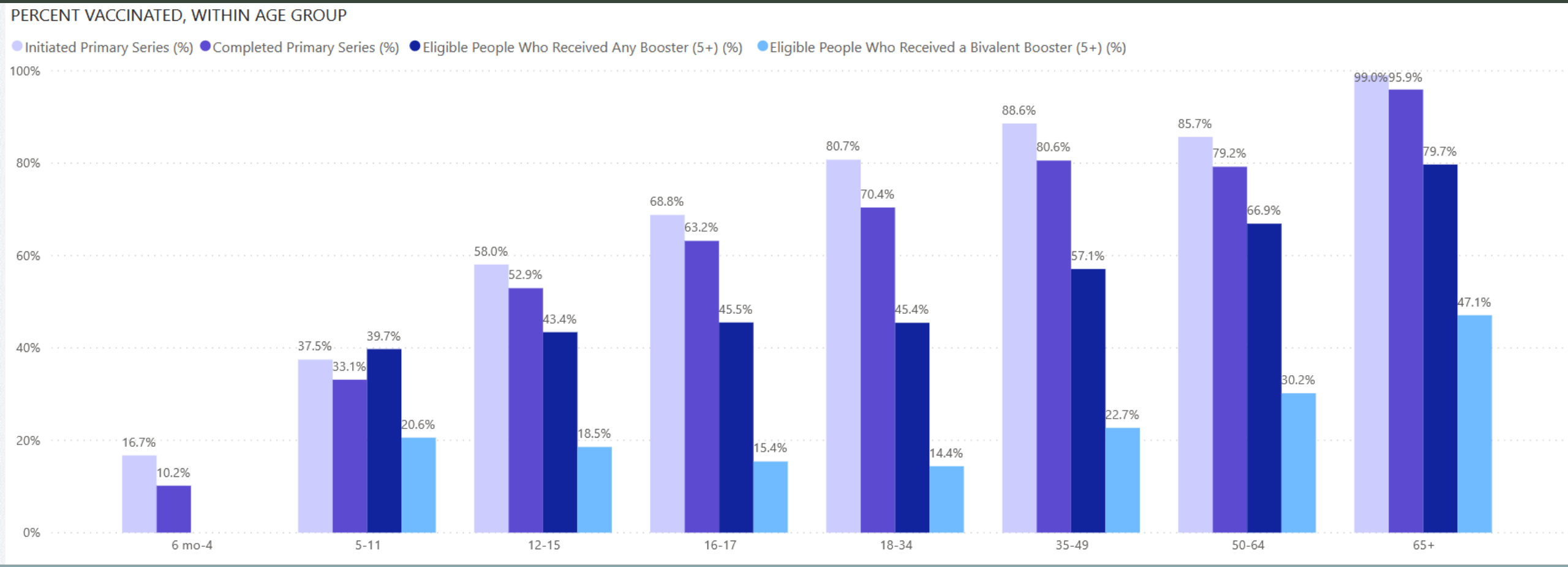
COVID-19 Washington Vaccine Rate



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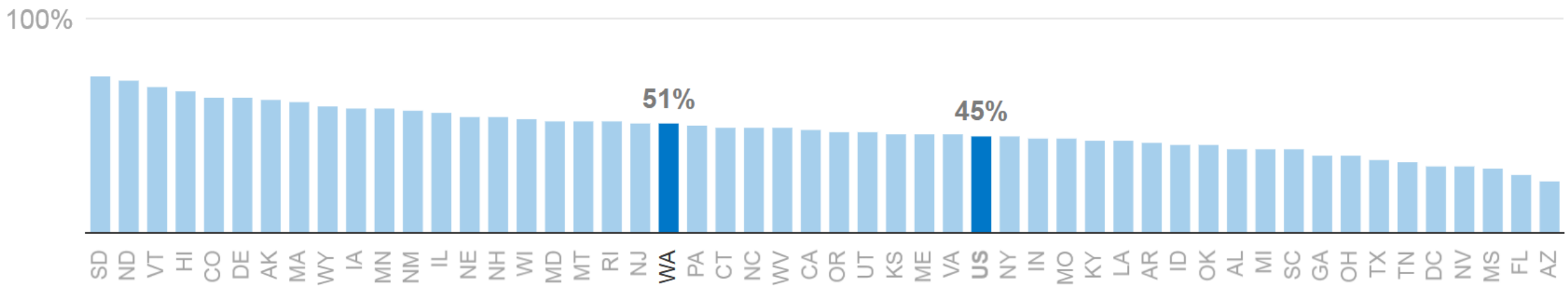
Working to Protect Most at Risk

Figure 1

Share of Nursing Facility Residents and Staff Who Are Up-to-Date With Their COVID-19 Vaccines, As of the Week Ending 11/20/2022

Residents Staff



SOURCE: KFF analysis of CMS COVID-19 Nursing Home Data, as of 11/20/2022 • PNG

KFF

Notifiable Condition Modernization

DOH Implementation

- **State Board of Health updated Chapter 246-101 WAC on Notifiable Conditions in 2021.**
- **14 Data systems/applications impacted**
  - **Go live date: November 21**
- **93 Reporting forms updated**
- **5 Reporting posters updated**

Communications & Trainings

- GovDelivery
- Newsletters
  - DOH Digest
  - Epi2Epi
  - Daily Dose
- Standing meetings:
  - ELR Listening Sessions
  - LHJ Monthly Calls
  - LHJ Training Series
  - Rainier Suite User Group

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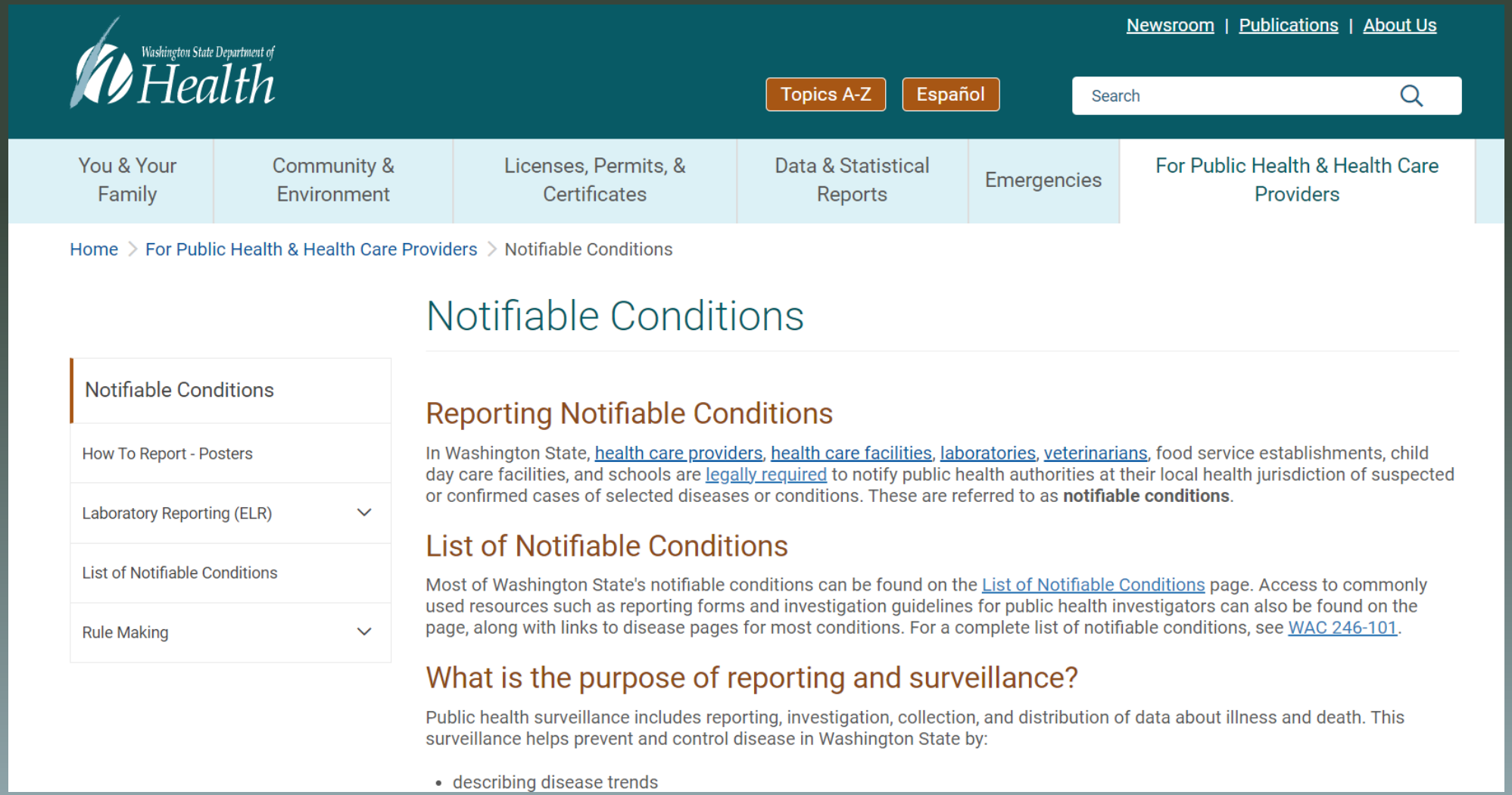
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Data & Statistical Reports
Emergencies
For Public Health & Health Care Providers
Home > For Public Health & Health Care Providers > Notifiable Conditions
Notifiable Conditions
Notifiable Conditions
How To Report - Posters
Laboratory Reporting (ELR)
List of Notifiable Conditions
Rule Making
Reporting Notifiable Conditions
In Washington State, health care providers, health care facilities, laboratories, veterinarians, food service establishments, child day care facilities, and schools are legally required to notify public health authorities at their local health jurisdiction of suspected or confirmed cases of selected diseases or conditions. These are referred to as notifiable conditions.
List of Notifiable Conditions
Most of Washington State's notifiable conditions can be found on the List of Notifiable Conditions page. Access to commonly used resources such as reporting forms and investigation guidelines for public health investigators can also be found on the page, along with links to disease pages for most conditions. For a complete list of notifiable conditions, see WAC 246-101.
What is the purpose of reporting and surveillance?
Public health surveillance includes reporting, investigation, collection, and distribution of data about illness and death. This surveillance helps prevent and control disease in Washington State by:
describing disease trends


FROM
Transactional Health
TO
Transformational Health

Washington State Department of Health

WASHINGTON STATE DEPARTMENT OF HEALTH

TRANSFORMATIONAL PLAN

A VISION FOR HEALTH IN WASHINGTON STATE

OUR PRIORITIES AND VISION FOR TRANSFORMATIONAL HEALTH

I. HEALTH AND WELLNESS

All Washingtonians have the opportunity to attain their full potential of physical, mental, and social health and well-being.

II. HEALTH SYSTEMS AND WORKFORCE TRANSFORMATION

All Washingtonians are well served by a health ecosystem that is robust and responsive, while promoting transparency, equity, and trust.

III. ENVIRONMENTAL HEALTH

All Washingtonians will thrive in a broad range of healthy environments — natural, built, and social.

IV. EMERGENCY RESPONSE AND RESILIENCE

All Washington communities have the information and resources they need to build resilience in the face of myriad public health threats and are well-positioned to prepare for, respond to, and recover from emergencies and natural disasters.

V. GLOBAL AND ONE HEALTH

All Washingtonians live in ever-connected environments that recognize and leverage the intersection of both global and domestic health as well as the connections of humans, animals, and the environment.

TRANSFORMATIONS IN ACTION

- INNOVATION AND TECHNOLOGY
- COMMUNITY CENTERED
- VISIBILITY AND VALUE
- EQUITY DRIVEN
- COLLABORATIVE ENGAGEMENT

CORNERSTONE VALUES: EQUITY • INNOVATION • ENGAGEMENT

VISION: EQUITY AND OPTIMAL HEALTH FOR ALL

Farther Together…

- We are still in midst of winter surge for respiratory viruses
- Get flu vaccine & COVID booster to protect yourself and loved ones, not too late
- Successful launch of notifiable condition modernization will improve future public health responses

WASHINGTON STATE BOARD OF HEALTH

Date: January 9, 2023

To: Washington State Board of Health Members

From: Umair A. Shah, MD, MPH, Secretary of Health

Subject: Emergency Rulemaking for On-Site Sewage Systems, WAC 246-272A-0110—Proprietary Treatment Products and Supply Chain Shortages

Background and Summary:

By memo dated June 1, 2022, the Washington Department of Health (Department) requested an emergency rule to address supply chain shortages associated with on-site sewage system proprietary treatment products regulated under WAC 246-272A-0110. At its meeting on June 8, 2022, the State Board of Health (Board) adopted an emergency rule to address the issue and staff filed the rule on June 15, 2022, as WSR 22-13-101. Subsequently, at the Board meeting on October 12, 2022, the Department updated the Board and requested that a second emergency rule be filed. The Board adopted a second emergency rule, which was filed on October 13, 2022, as WSR 22-21-070.

Today, the Department is asking the Board to adopt a third emergency rule to allow retrofits and maintenance of proprietary treatment products with comparable components during continued supply chain shortages or similar manufacturing disruptions to avoid public health risks associated with poor system performance. The following information further explains the Department's emergency rule request, concurrent rulemaking on the full chapter, and implementation status of the emergency rule.

Under RCW 43.20.050, the Board has rulemaking authority for on-site sewage systems with design flows less than three thousand five hundred gallons per day. The Board's rules, chapter 246-272A WAC, set comprehensive standards for the siting, design, installation, use, care, and management of these small on-site sewage systems. The Department and local health jurisdictions jointly administer the rules.

Under RCW 34.05.350, the Board may adopt emergency rules when it finds that emergency adoption of a rule is necessary for the preservation of public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. Emergency rules are effective for 120 days. Identical or substantially similar emergency rules may be adopted in sequence if conditions have changed or the agency is actively undertaking the appropriate procedures to adopt the rule as a permanent rule.

(continued on the next page)

In 2018, the Board filed a CR-101, Preproposal Statement of Inquiry, WSR 18-06-082, to initiate permanent rulemaking and update the on-site sewage system rules. That rulemaking is still underway and is expected to conclude in 2023. Amending WAC 246-272A-0110 to address supply chain shortages associated with on-site sewage system proprietary treatment products fits within the existing CR-101 and staff are working to include it in the permanent rulemaking as previously directed.

The on-site sewage system rules require installation of on-site sewage systems that are approved by the Department for use in Washington and that are designed to provide adequate treatment of sewage on the properties they serve. This includes the use of proprietary or trademarked technologies that are properly tested, approved, and registered for use in the state based on the Board's rules.

Homeowners, service providers, and regulators are continuing to experience supply chain shortages and other manufacturing disruptions that are affecting the maintenance and repair of proprietary systems currently in use as well as the installation of new systems. This is due mainly to the shortage of a specific product used in many proprietary systems—a disinfecting ultraviolet light manufactured by Salcor Inc.—as well as other parts and components that continue to be in short supply and are integral to the performance of these on-site sewage systems.

The shortage of replacement parts and components threatens system maintenance and public health and safety due to poor system performance. Failure to maintain on-site sewage systems easily and properly can also impede system inspections associated with property-transfer transactions.

There are thousands of on-site sewage systems in Washington that use the Salcor disinfecting ultraviolet light, and many types of proprietary products serve properties with challenging site conditions such as small lots, poor soils, and proximity to surface waters that compound the public health risks associated with the existing manufacturing disruptions.

Jeremy Simmons, Manager of the Department's On-Site Wastewater Management Program, will explain the Department's request for this third emergency rule to continue to allow manufacturers of registered proprietary treatment products to replace system components that are unavailable due to manufacturing disruptions with comparable components that will not negatively impact performance, treatment, operation, or maintenance of the original registered product. He will also update the Board on activity to date reviewing and approving these component-replacement requests from manufacturers. Given the possibility of continuing or future shortages, staff will continue to research this issue and address it in the permanent on-site sewage system rulemaking.

Recommended Board Actions:

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

The Board directs staff to file a third CR-103E, Emergency Rulemaking Order, upon expiration of the second emergency rule, filed as WSR 22-21-070, to amend WAC 246-272A-0110 to help ensure on-site sewage system proprietary treatment products continue to function properly without negatively impacting treatment, operation, or maintenance during supply chain shortages or other manufacturing disruptions.

Staff
Stuart Glasoe

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.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE of ENVIRONMENTAL HEALTH and SAFETY
PO Box 47824, Olympia, WA 98504
(360) 236-3330 ● 711 Washington Relay Service

June 1, 2022

TO: Michelle Davis, Executive Director
State Board of Health

FROM: Todd Phillips, Director
Office of Environmental Health and Safety

SUBJECT: Emergency rule request, WAC 246-272A-0110, Proprietary treatment products - Certification and registration.

The Department of Health (department) requests the State Board of Health adopt an emergency rule to allow on-site sewage systems proprietary treatment products to be operated and maintained with the best components available during an ongoing supply chain shortage.

WAC 246-272A-0110, requires manufacturers of proprietary treatment products used in on-site sewage systems to test their products with the National Science Foundation (NSF) and register their products with the department based on the NSF test results before the product is allowed to be permitted or installed in Washington. This allows the department to ensure that products used in on-site sewage systems can provide the appropriate level of treatment needed to protect public health and the environment such as such as drinking water sources and shellfish sites. Proprietary treatment products are required to be installed and operated as they were tested and registered to ensure they continue to perform as needed. Supply chain disruptions have occasionally made this requirement difficult for manufacturers and owners to comply with, particularly in recent years.

Some manufacturers have incorporated disinfecting ultraviolet (UV) light systems into their products to achieve higher treatment performance required for sensitive sites. These disinfecting UV light systems require routine maintenance that requires replacement supplies. Salcor Inc., the manufacturer of a disinfecting UV light system incorporated into several proprietary treatment products sold and currently in use in Washington, has recently ceased operation. This has created a sudden shortage of Salcor supplies that are needed for operation and maintenance for on-site sewage systems currently in operation. Exact numbers are unavailable, but we know there are several thousand on-site sewage systems using Salcor products in Washington.

Without these supplies, the on-site sewage systems that use Salcor products do not operate as registered and may not completely treat sewage. This may impact sensitive sites near to these on-site sewage systems. It is also currently preventing home sales when maintenance of these devices is noted on home inspections for property transfers because replacement parts are unavailable. New construction is likewise impacted as many active or pending permits include on-site sewage systems using Salcor products. There are other manufacturers of disinfecting UV light systems that can be substituted into the proprietary treatment products that use Salcor products.

The request for an emergency rule is intended to allow manufacturers to make a written request to substitute components of a registered product's construction in cases of a demonstrated supply chain shortage or similar manufacturing disruptions that may impact installations, operation, or maintenance. The request must include information that demonstrates the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and maintenance of the original registered product. This is a short-term solution that will provide appropriate public health and environmental protections while limiting negative impacts to home sales and construction. A long-term solution will be investigated and developed for incorporation into the permanent rulemaking while this emergency rule is in effect.

Respectfully,

Todd Phillips, R.S.
Director, Office of Environmental Health & Safety

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

WAC 246-272A-0110 Proprietary treatment products—Certification and registration. (1) Manufacturers shall register their proprietary treatment products with the department before the local health officer may permit their use.

(2) To qualify for product registration, manufacturers desiring to sell or distribute proprietary treatment products in Washington state shall:

(a) Verify product performance through testing using the testing protocol established in Table I and register their product with the department using the process described in WAC 246-272-0120;

(b) Report test results of influent and effluent sampling obtained throughout the testing period (including normal and stress loading phases) for evaluation of constituent reduction according to Table II;

(c) Demonstrate product performance according to Table III. All ((~~thirty-day~~)) 30-day averages and geometric means obtained throughout the test period must meet the identified threshold values to qualify for registration at that threshold level; and

(d) For registration at levels A, B, and C verify bacteriological reduction according to WAC 246-272A-0130.

(3) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility accredited by ANSI:

(a) ANSI/NSF Standard 40—Residential Wastewater Treatment Systems;

(b) NSF Standard 41: Non-Liquid Saturated Treatment Systems;

(c) NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation; or

(d) Protocol for bacteriological reduction described in WAC 246-272A-0130.

(4) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility meeting the requirements established by the Testing Organization and Verification Organization, consistent with the test protocol and plan:

(a) EPA/NSF—Protocol for the Verification of Wastewater Treatment Technologies; or

(b) EPA Environmental Technology Verification Program protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction.

(5) Treatment levels used in these rules are not intended to be applied as field compliance standards. Their intended use is for establishing treatment product performance in a product testing setting under established protocols by qualified testing entities.

(6) Manufacturers may make written application to the department to substitute components of a registered product's construction in cases of supply chain shortage or similar manufacturing disruptions that may impact installations, operation, or maintenance. The application must include a report stamped, signed, and dated by a professional engineer that demonstrates the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and maintenance of the original registered product. The department's

approval of the substituted component is in effect until it is rescinded by the department.

TABLE I

Testing Requirements for Proprietary Treatment Products	
Treatment Component/ Sequence Category	**Required Testing Protocol**
Category 1 Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.	ANSI/NSF 40— Residential Wastewater Treatment Systems (protocols dated between July 1996 and the effective date of these rules)
Category 2 Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	EPA/NSF Protocol for the Verification of Wastewater Treatment Technologies/ EPA Environmental Technology Verification (April 2001)
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	NSF/ANSI Standard 41: Non-Liquid Saturated Treatment Systems (September 1999) NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation (April 2000)
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction/EPA Environmental Technology Verification Program (November, 2000)

TABLE II

Test Results Reporting Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Testing Results Reported**
Category 1 Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.	Report test results of influent and effluent sampling obtained throughout the testing period for evaluation of constituent reduction for the parameters: $CBOD_5$, and TSS:

Test Results Reporting Requirements for Proprietary Treatment Products	
	□ Average □ Standard Deviation □ Minimum □ Maximum □ Median □ Interquartile Range □ 30-day Average (for each month) For bacteriological reduction performance, report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within ((~~thirty-day~~)) 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period. See WAC 246-272A-0130. Test report must also include the individual results of all samples drawn throughout the test period.
Category 2 Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	Report all individual test results and full test average values of influent and effluent sampling obtained throughout the testing period for: $CBOD_5$, TSS and O&G. Establish the treatment capacity of the product tested in pounds per day for $CBOD_5$.
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	Report test results on all required performance criteria according to the format prescribed in the NSF test protocol described in Table I.
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Report test results on all required performance criteria according to the format prescribed in the test protocol described in Table I.

TABLE III

Product Performance Requirements for Proprietary Treatment Products						
Treatment Component/Sequence Category	**Product Performance Requirements**					
Category 1 Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.	**Treatment System Performance Testing Levels**					
	Level	**Parameters**				
		$CBOD_5$	**TSS**	**O&G**	**FC**	**TN**
	A	10 mg/L	10 mg/L	——	200/100 ml	——
	B	15 mg/L	15 mg/L	——	1,000/100 ml	——
	C	25 mg/L	30 mg/L	——	50,000/100 ml	——
	D	25 mg/L	30 mg/L	——	——	——
	E	125 mg/L	80 mg/L	20 mg/L	——	——
	N	——	——	——	——	20 mg/L
	Values for Levels A - D are 30-day values (averages for $CBOD_5$, TSS, and geometric mean for FC.) All 30-day averages throughout the test period must meet these values in order to be registered at these levels. Values for Levels E and N are derived from full test averages.					
Category 2 Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E.	All of the following requirements must be met:					

Product Performance Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Product Performance Requirements**
(Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	(1) All full test averages must meet Level E; and (2) Establish the treatment capacity of the product tested in pounds per day for $CBOD_5$.
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	Test results must meet the performance requirements established in the NSF test protocol.
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Test results must establish product performance effluent quality meeting Level N, when presented as the full test average.

January 2023

On-site Sewage Systems – Emergency Rule

WAC 246-272A-0110

Emergency Rule Summary and Product-Component Approvals

The State Board of Health (Board) adopted an emergency rule on October 13th, 2022, to allow manufacturers of registered proprietary treatment products to replace components of their products that are not available due to supply chain shortages or similar manufacturing disruptions with like components that will not negatively impact performance, treatment, operation, or maintenance of the original registered product. This filing followed the initial emergency rule filed on June 15, 2022. As directed by the Board, the emergency rule amendment will be considered for incorporation into the permanent rulemaking that is currently underway.

To date, three companies have received department approval to substitute the Salcor 3G UV lamp, a disinfecting ultraviolet lamp, as summarized in the table below.

Company	Registered Product	Component to be Substituted	Substitution Component(s)	Approved Treatment Levels
Bio-Microbics	MicroFAST series with Salcor 3G	Salcor 3G UV Unit	Norweco AT 1500 UV & Jet Illumi-jet 952 & 952 Retrofit Kit	Treatment Level A Treatment Level B
Delta	Whitewater DF with Salcor 3G	Salcor 3G UV Unit	Norweco AT 1500 UV & Jet Illumi-jet 952 & 952 Retrofit Kit	Treatment Level A Treatment Level B
Delta	ECOPOD - N with Salcor 3G	Salcor 3G UV Unit	Norweco AT 1500 UV & Jet Illumi-jet 952 & 952 Retrofit Kit	Treatment Level A Treatment Level B
Enviro-Flo	NuWater B 500 with Salcor 3G	Salcor 3G UV Unit	Jet Illumi-jet 952 & 952 Retrofit Kit	Treatment Level B
Enviro-Flo	NuWater BNR 500 / BNR 600 with Salcor 3G	Salcor 3G UV Unit	Jet Illumi-jet 952 & 952 Retrofit Kit	Treatment Level A Treatment Level B

These approvals allow replacement of the Salcor 3G UV lamp on several individual product lines as listed on the List of Registered On-site Treatment and Distribution Products for Washington State.

Link to emergency rule:
Proprietary Treatment Products Emergency Rule | Washington State Department of Health
Emergency Rule OSS Proprietary Treatment Products - CR103 (wa.gov)

Link to permanent rule making:
On-site Sewage System Rule Revision | Washington State Department of Health

For more information, contact Jeremy Simmons, Program manager at (360) 236-3346.

CODE REVISER USE ONLY

RULE-MAKING ORDER
EMERGENCY RULE ONLY

CR-103E (December 2017)
(Implements RCW 34.05.350 and 34.05.360)

Agency: State Board of Health

Effective date of rule:

Emergency Rules

☒ Immediately upon filing.

☐ Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: WAC 246-272A-0110, Proprietary treatment products - Certification and registration. The State Board of Health (board) adopted an emergency rule regarding certification and registration of proprietary treatment products used in on-site sewage systems and it was filed on October 13, 2022 (WSR 22-21-070). This filing followed the initial emergency rule filed in June 15, 2022 (WSR 22-13-101). Both emergency rules amended WAC 246-272A-0110 to allow manufacturers to make a written request to the Department of Health (department) to substitute components of a registered product's construction in cases of a demonstrated supply chain shortage or similar manufacturing disruptions that may impact installations, operation, or maintenance. The request must include information that demonstrates the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and maintenance of the original registered product.

This third emergency rule adopts the same process but with some minor changes to allow manufacturers of registered proprietary treatment products to replace components of their products that are not available due to supply chain shortages or similar manufacturing disruptions with like components, as long as the components will not negatively impact performance, treatment, operation, or maintenance of the original registered product.

The underlying justification for the initial and second emergency rule still applies because without the emergency rule, the current rule would impede home sales when maintenance of these devices is noted on home inspections for property transfers because replacement parts are unavailable. New construction is likewise impacted as many active or pending permits include on-site sewage systems using Salcor products. There are other manufacturers of disinfecting ultraviolet (UV) light systems that can be substituted into the proprietary treatment products that use Salcor products. Since the filing of second emergency rule Salcor was sold and the new owner is working with NSF to get their products approved but this process will take several months. In order to continue to protect the public's health, safety, and welfare, it is necessary to adopt a third emergency rule to allow the department to consider written requests from manufacturers of proprietary treatment products for substitutes to proprietary treatment product components so their systems will be able to function properly without negatively impacting treatment, operation or maintenance during supply chain shortages. To date, three manufacturers have received department approval to substitute the Salcor 3G UV lamp with an alternate UV lamp.

In 2018, the board filed a CR-101, Preproposal Statement of Inquiry (WSR 18-06-082), to initiate permanent rulemaking and update the on-site sewage system rules. That rulemaking is still underway and is expected to conclude in 2023. As directed by the board at the June 8, 2022 meeting, the emergency rule amendment will be considered for incorporation into the permanent rulemaking that is currently underway.

Citation of rules affected by this order:

New: None
Repealed: None
Amended: WAC 246-272A-0110
Suspended: None

Statutory authority for adoption: RCW 43.20.050 (3)

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The board finds that in order to protect the public's health, safety, and welfare it is necessary to adopt the emergency rule to amend WAC 246-272A-0110 to allow the department to consider written request from manufacturers of proprietary treatment products to substitute a proprietary treatment product component so their systems may continue to function properly without negatively impacting performance or diminish the effect of the treatment, operation, or maintenance during supply chain shortages.

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	0	Amended	0	Repealed	0
Federal rules or standards:	New	0	Amended	0	Repealed	0
Recently enacted state statutes:	New	0	Amended	0	Repealed	0

The number of sections adopted at the request of a nongovernmental entity:

	New	0	Amended	0	Repealed	0

The number of sections adopted on the agency's own initiative:

	New	0	Amended	1	Repealed	0

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	0	Amended	0	Repealed	0

The number of sections adopted using:

Negotiated rule making:	New	0	Amended	0	Repealed	0
Pilot rule making:	New	0	Amended	0	Repealed	0
Other alternative rule making:	New	0	Amended	1	Repealed	0

Date Adopted:	**Signature:** Place signature here
Name: Michelle A. Davis	
Title: Executive Director	

WASHINGTON STATE BOARD OF HEALTH

Date: January 9, 2023

To: Washington State Board of Health Members

From: Keith Grellner, Chair

Subject: Rules Update—On-site Sewage Systems, Chapter 246-272A WAC

Background and Summary:

Under RCW 43.20.050, the State Board of Health (Board) has rulemaking authority for on-site sewage systems with design flows less than three thousand five hundred gallons per day. The Board's rules, chapter 246-272A WAC, set comprehensive standards for the siting, design, installation, use, care, and management of these small on-site sewage systems. The Washington Department of Health (Department) and local health jurisdictions jointly administer the rules.

WAC 246-272A-0425 requires the Department to review the rules every four years and report recommendations to the Board and local health officers. The Department last reported on the rules to the Board in January 2018, recommending that the Board initiate rulemaking to update the rules. The Board endorsed the recommendation to initiate rulemaking and filed a CR-101, Preproposal Statement of Inquiry, on March 6, 2018, as WSR 18-06-082.

Jeremy Simmons, Manager of the Department's On-Site Wastewater Management Program, will update the Board on this important rulemaking, providing background on the rules, overview of the rulemaking process, highlights of key issues and revisions in the draft rules, and anticipated next steps in the final phases of this rulemaking.

This is an informational update involving no Board action. Staff anticipate returning to the Board in March for a final project briefing before filing the CR-102, Proposed Rulemaking, for public review and comment. A public hearing on the proposed rules is tentatively scheduled for June 2023.

Staff

Stuart Glasoe

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.

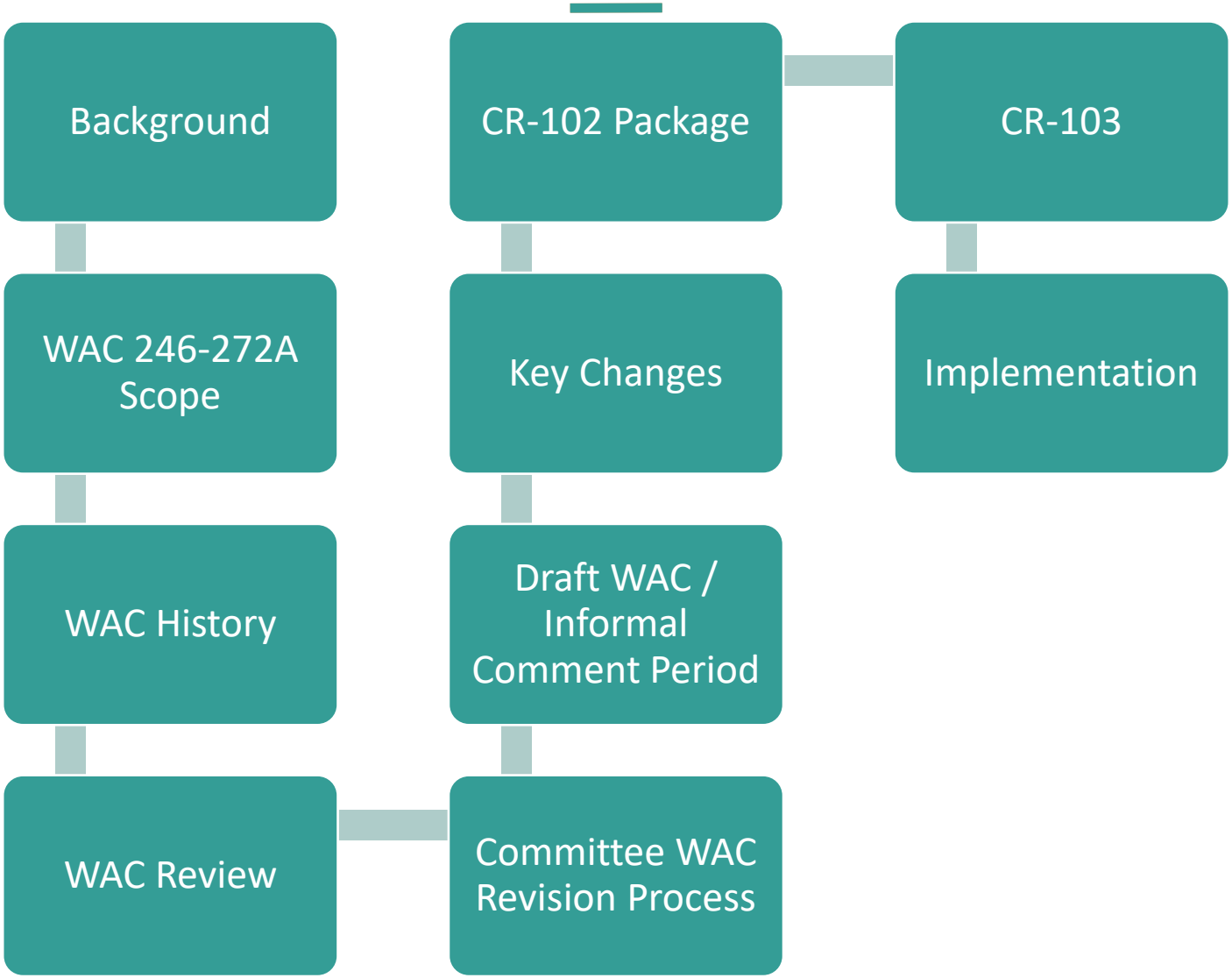
REVISION OF CHAPTER 246-272A WAC ON-SITE SEWAGE SYSTEMS

State Board of Health Update
January, 2023

Presenter

Jeremy Simmons
Manager
Wastewater Management Section
Office of Environmental Health and Safety
jeremy.simmons@doh.wa.gov

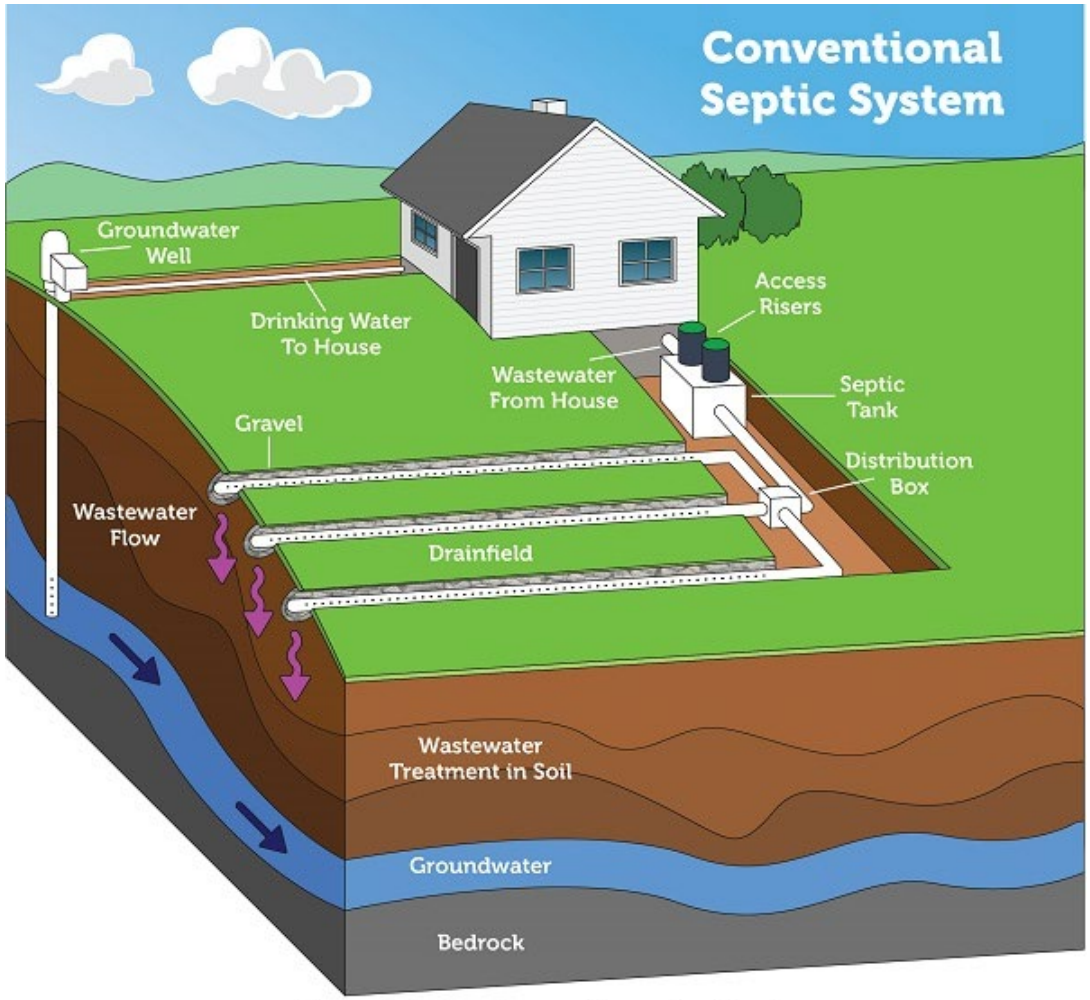
Presentation Outline



Acronyms

- LHJ = Local Health Jurisdiction
- LHO = Local Health Officer
- LMP = Local Management Plan
- LOSS = Large On-site Sewage System
- OSS = On-site Sewage System

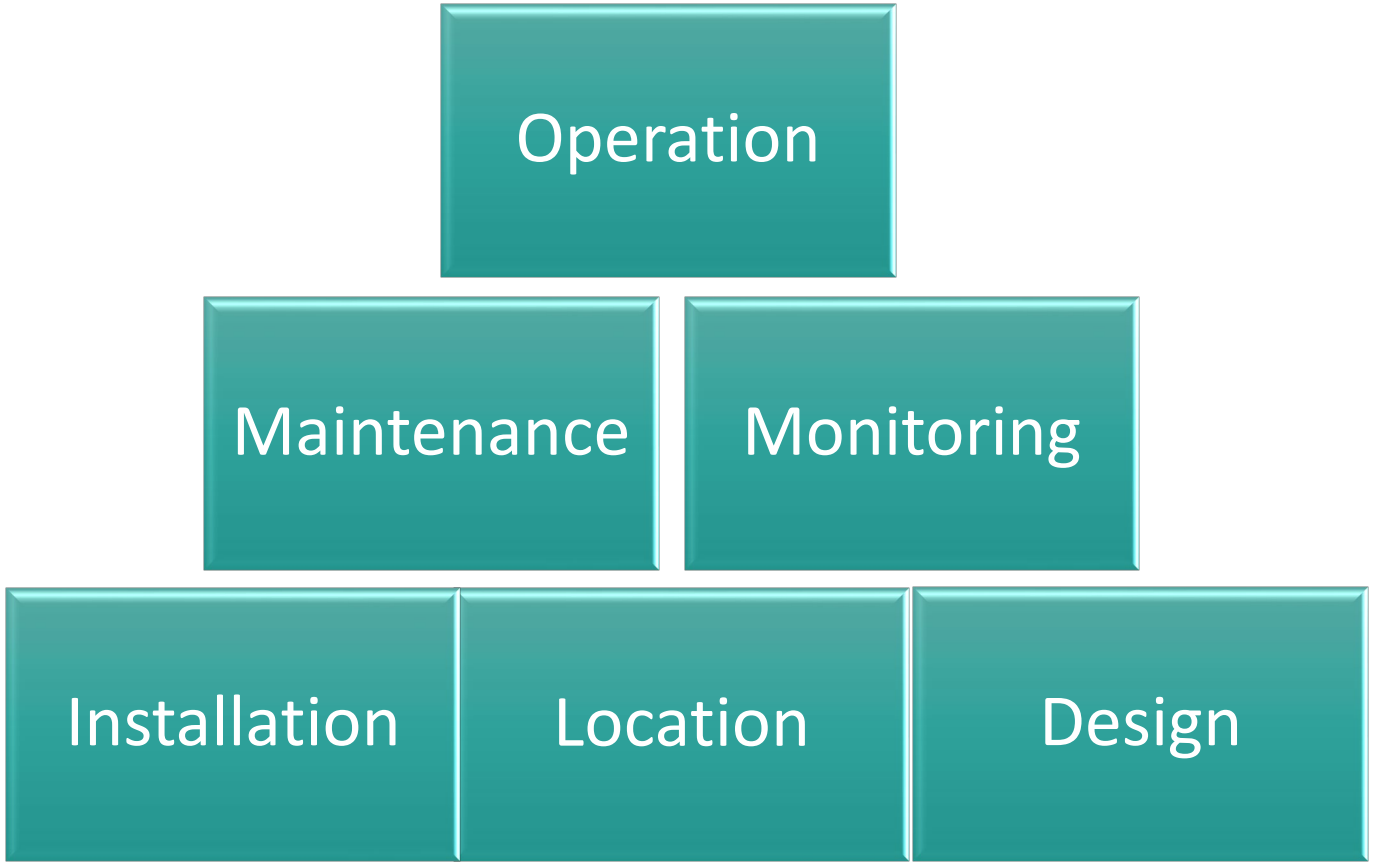
On-site Sewage System (OSS)



Please note: Septic systems vary. Diagram is not to scale.

Types of Septic Systems | US EPA

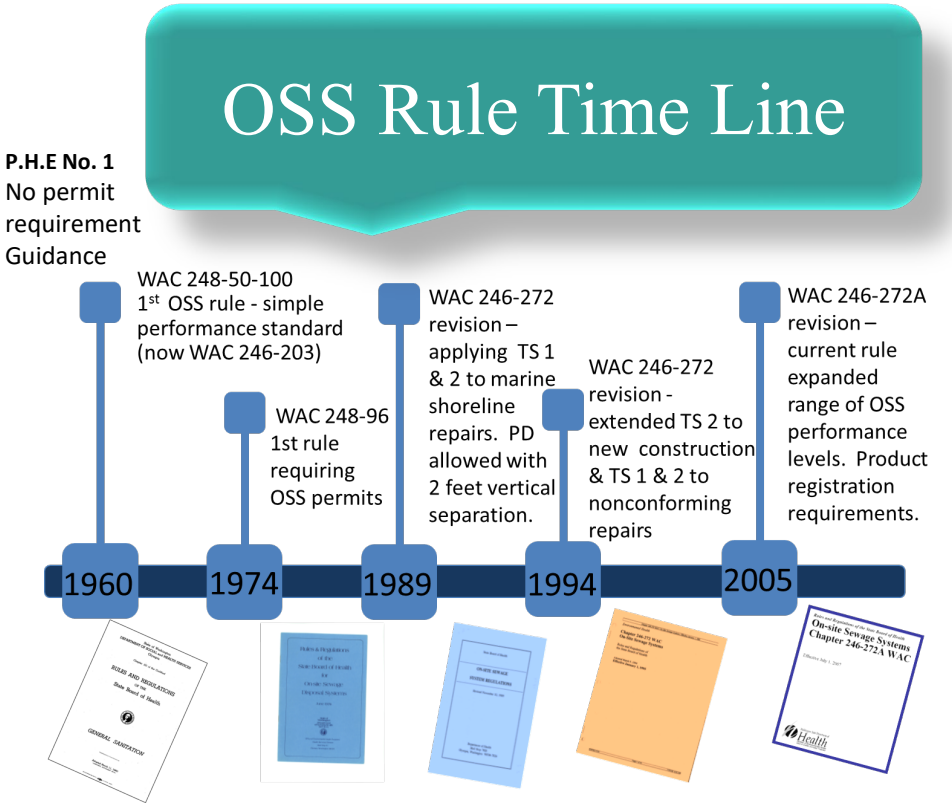
Chapter 246-272A WAC Regulates On-site Sewage Systems



Chapter 246-272A WAC

WAC 246-272A-0425 requires DOH to:

- Evaluate the effectiveness of the rule every four years
- Determine if revisions are needed
- Report recommendations to the state board of health and local health officers
- **The rule was reviewed in 2009 and 2013, with the finding that no revisions were needed**
- **In 2017 the review concluded with the finding that revisions were needed**



Committee Revision Drafting Process

January 2018

State Board of Health directed DOH to begin rule revision

June 2018 Committee Kickoff Meeting

- Defined Scope
- Established Committee and Subcommittees
- Established Charter and Schedule

5 Full Committee Meetings

- September 2018
- November 2018
- December 2018
- April 2019
- August 2019

8 Technical Subcommittee Meetings

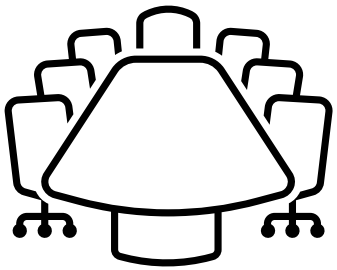
6 Policy Subcommittee Meetings

Informal Comment Period

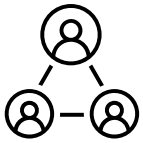
August – October 2019

Update to State Board of Health

November 2019



Who was on the Revision Committee?



Industry

- OSS Designers
- OSS Design Engineers
- National OSS Technology Manufacturers
- WA OSS Technology Manufacturers
- OSS Service Providers
- OSS Installers
- WA On-Site Sewage Association

Affected Groups

- Citizens Groups
- Shellfish Industry
- Environmental Groups
- WA Realtors
- Property Rights Groups

Government

- WA Dept of Ecology
- Puget Sound Partnership
- Tulalip Tribe
- LHJ-Western WA Large Co
- LHJ – Eastern WA Large Co
- LHJ – Western WA Small Co
- LHJ – Eastern WA Small Co

✓ DOH facilitated and participated in conversations
✓ SBOH Staff attended and provided input on many meetings

All Rectangles = Voting Members

Legislation

In 2018,

SSB 5503

Passed

It Addressed:

Repairs/Failure

Inspection Access & Notification

Easements

SSB 5503 Became RCW 43.20.065

RCW 43.20.065

Two important new requirements

Rules must:

1. Give first priority to allowing repair and second priority to allowing replacement of an existing conventional on-site sewage system, consisting of a septic tank and drainfield, with a similar conventional system;

2. Allow a system to be repaired using the least expensive alternative that meets standards and is likely to provide comparable or better long-term sewage treatment and effluent dispersal outcomes.

August – October 2019
Informal Comment Period

157 Comments

- OSS Designers
- Department of Ecology
- Elected Officials
- Environmental Advocates
- LHJ Partners
- Manufacturers
- Realtors

Local Management Plan Updates

- LHJs concerned costs outweigh benefits & about equity between funded and unfunded counties
- Industry supportive as way to increase number of OSS in compliance

Property Transfer Inspections

- Consensus on value to public health, environmental, and consumer protection
- Some LHJs concerned about cost to get program started and fees to sustain it
- Real estate community supportive if process does not lead to loss of housing stock or undue delays

Remediation

- Appreciation of options for LHJs and owners

Minimum Land Area

- Appreciation of alternative way to build on sub-sized lots by using nitrogen-reducing technology

Key Changes in Draft Rule

- Local Management Plans
- Field Verification of Proprietary Products
- Property Transfer Inspections
- Repairs
- Remediation
- Minimum Lot Sizes
- Product Supply Chain Issues

Current Requirements Local Management Plans Puget Counties

Currently, Puget Sound LMPs must specify how the LHJ will:

- Find and inventory OSS
- Identify areas where OSS could pose increased risk
- Identify operation, maintenance, and monitoring requirements for OSS within increased risk areas
- Educate homeowners on their responsibilities
- Remind homeowners to complete routine inspections

Revisions to LMP Requirements Puget Counties

LMPs must include everything previously required and, in addition must:

- Be reviewed every 5 years by LHJ and DOH and be revised as needed
- Include in the list of areas to consider where OSS may pose increased risk:
  - Areas where phosphorus is a contaminant of concern
  - Areas where sea level rise may impact horizontal separations to surface water
- Include a summary of program expenditures by activity and fund source and a strategy to fill any funding gaps.
- Report OSS inventory numbers to DOH

Local Management Plans
Non-Puget Counties

Currently, Non-Puget Sound LMPs must describe:

- How the LHJ will remind and encourage homeowners to complete routine inspections
- The capacity of the LHJ to provide education and operational and maintenance information
- The capacity of the LHJ to fund the OSS plan

The draft revisions propose no changes to the Non-Puget Sound LMPs

Field Verification of Proprietary Treatment Products

Manufacturers of proprietary products which treat fecal coliform, E. coli, or nitrogen must complete a one-time Field Verification Report following the:

Proprietary On-site Wastewater Treatment Products Department Standards and Guidance

This document requires:

- Sampling 25 of each registered treatment product in the field;
- Sample results to meet the registration level that the product is registered on the department's *List of Registered On-site Treatment and Distribution Products*;
- Products that do not meet the treatment level they are registered at are referred to the Technical Advisory Group, for recommendation to the department. Product registration may be adjusted or rescinded.

Property Transfer Inspections (PTIs)

- All OSS must be inspected preceding a property transfer inspection beginning two years after effective date of rule
- LHO may:
  - Remove the requirement for the inspection if OSS is in compliance with routine inspection requirements in WAC 246-272A-0280(1)(e)
  - Verify the results of the inspection
  - Require additional inspections and requirements
  - Require a compliance schedule for failures discovered during PTIs
- WA Realtors asked us to create a standardized PTI form. EHDs asked us to not make this mandatory. The draft language requires that the owner use a form approved by the LHO.

Repairs

Incorporated requirements from RCW 43.20.065, including:

- Priority is given to allowing a repair or replacement of a conventional OSS, consisting of a septic tank and drainfield, with a similar conventional OSS that complies with standards and provides comparable long-term treatment;
- Allowing repairs using the least expensive alternative that meets standards; and
- That LHO not impose or allow the imposition of more stringent performance requirements of equivalent OSS on private entities than public entities.

Repairs

- New definition for Minor Repair to clarify that permits aren't needed for many repairs.
- LHO must evaluate all unpermitted discharges to determine if they pose a public health threat. If determined to be a public health threat the LHO shall require a compliance schedule.
- LHO must report failures within 200 feet of shellfish growing areas to the department.

Remediation
Summary of Draft Changes

- Option that Local Health Officer may develop a remediation policy.
- Remediation must not:
  - Result in damage to the OSS;
  - Result in insufficient soil treatment in the zone between the soil dispersal component and the highest seasonal water table, restrictive layer, or soil type seven; or
  - Disturb the soil in or below the soil dispersal component if the vertical separation requirements of WAC 246- 272A-0230 are not met.
- Department must maintain a guidance document on remediation.
- Closes a 2006 CR-101 on remediation.

Minimum Lot Size and Land Area Summary of Draft Changes

- Minimum lot sizes increased by 220 to 1,000 sq. ft. for new developments with public water supplies
- New minimum usable land area requirement for new developments using OSS
- New nitrogen-based methodology for development on smaller lots that do not meet minimum lot size requirements
- Added clarifying language that LHOs may permit an OSS on a preexisting lot of record that does not meet current minimum land area requirements only if it meets all requirements of chapter 246-272A WAC without the use of a waiver

Product Supply Chain Issues

- Allow repairs with components that the product was not tested and registered with
- Requires Engineer to attest that repairs will not impact performance or maintenance
- Only necessary retrofits allowed

Cost Survey and Significant Analysis

Cost Survey & Significant Analysis Work

- DOH conducted surveys on estimated costs to implement the proposed rule:
  - All LHJs
  - All Professional Engineers in Washington
  - All Onsite Sewage System Designers
  - All known manufacturers
  - Hundreds of Installers, Service Providers, and Pumpers
- DOH is currently compiling and have begun analyzing this data
- DOH is currently developing the Significant Analysis, which takes a deeper look at costs and investigates nonmonetary impacts

What's Next?

- **Now:** Update State Board of Health
- **March 2023:** Briefing to State Board of Health;
- **March 2023:** File CR102 (proposed rule);
- **April 2023:** Last day to submit written comments
- **June 2023:** Hold public hearing
- **July 2023:** File CR103
- **Summer/Fall 2023:** Begin training partners on rule's new requirements
- Staggered effective dates, rule implementation (**June 2024** most new requirements)

Washington State Department of Health is committed to providing customers with forms and publications in appropriate alternate formats. Requests can be made by calling 800-525-0127 or by email at civil.rights@doh.wa.gov. TTY users dial 711.

Summary of Draft Rule Changes
January 2023

On-site Sewage Systems

Chapter 246-272A WAC

How to Use this Document

This worksheet contains the highlights from the current draft rule, which is based on the recommendations made by the Onsite Rule Revision Committee and changes made by department program and policy staff. If a section is not listed, there are no proposed changes or only minor changes.

Acronyms

LHJ	Local Health Jurisdiction
LHO	Local Health Officer
LMP	Local Management Plan
OSS	On-site Sewage System
SFR	Single Family Residence
SSAS	Subsurface Soil Absorption System

Summary of Draft Changes

WAC Section Number	Section Title	Draft Changes
-0007	**Applicability**	• Created new section to move Applicability section nearer the beginning of the chapter for ease of use. • Clarified language describing that chapter applies to treatment, siting, design, installation, and operation and maintenance of OSS. • Updated language for clarity.
-0010	**Definitions**	• Changed several definitions for clarity and consistency throughout rule. • Added new definitions to address issues with application of current rule language. • Added new definitions to address issues with application of draft rule language.
-0013	**Local Regulation**	• Created new section number. Moved Local Regulation to its own section, separate from LMPs. • Updated language for clarity.

-0015	**Local Management Plans**	• Removed Local Regulation from section and moved to section -0013.
		• Added requirements for Puget Sound LHJs to include in their LMPs consideration of:
		  ○ Areas where phosphorus is a contaminant of concern
		  ○ Areas where sea level rise may impact horizontal separation to surface water

WAC Section Number	Section Title	Draft Changes

		• Added requirement for Puget Sound LHJs to include a summary of program expenditures by activity and fund source and a strategy to fill any funding gaps.
		• Added requirement that the LHO for each Puget Sound county and the department review and approve their LMP within 2 years of the rule effective date, and every 5 years thereafter, and revise as necessary.
		• Changed the required process for LHO to allow public input in LMP before submitting to the department for approval:
		  ○ From holding a public hearing prior to approval of a new or revised LMP by the local board of health,
		  ○ To providing an opportunity for public input following review by the LHO, prior to approval by the local board of health.
		• Added requirement that the LHO for each Puget Sound county to report annually to the department the following data elements: number of OSS, number of unknown OSS identified, number of failures found, number of failures repaired, number of property transfer inspections completed, and status of compliance with inspections required by WAC 246-272A-0270.
		• Updated language for clarity.

-0020	**Applicability**	• Moved to section -0007
-0025	**Connection to public sewer system**	• Clarified where to measure 200' from to determine if connection to sewer is required. • Added new term, "Building Drain." • Updated language for clarity.
-0100	**Sewage Technologies**	• Changed Recommended Standards & Guidance (RS&G) to Departmental Standards and Guidance (DS&G). • Removed reference to sewage technology categories. • Added provision that department may remove, restrict, or suspend a product's approval for failure to meet requirements of approval. • Updated language for clarity.
-0110	**Proprietary treatment products – Certification and registration**	• Added *NSF/ANSI Standard 245: Residential Wastewater Treatment Systems - Nitrogen Reduction* as a method to verify nitrogen reduction for proprietary nitrogen reducing products. • Added *NSF/ANSI Standard 385 Residential Wastewater Treatment Systems – Disinfection Mechanics* as a method to verify bacterial reduction for proprietary supplemental bacterial reduction products. • Updated references to testing protocols, including adding a protocol to use EPA Method 1664, Revision B to verify performance of Category 2 products. • Added requirement that product manufacturers follow departmental field performance standards.

WAC Section Number	Section Title	Draft Changes
		• Updated *Table I, Testing Requirements for Proprietary Treatment Products*, with updated references to testing protocols, added EPA Method 1664, Revision B as a testing requirement protocol for Category 2 products, and for clarity. • Updated *Table II, Test Results Reporting Requirements for Proprietary Treatment Products*, to separate disinfection levels from other treatment levels to allow for registration of supplemental (standalone) disinfection products, to allow bacterial reduction verification of Disinfection Level 1 (DL 1) via testing for fecal coliform or E. coli, and for clarity. • Updated *Table III, Product Performance Requirements for Proprietary Treatment Products,* to separate disinfection levels from other treatment levels to allow for registration of supplemental (standalone) disinfection products, to allow bacterial reduction verification via testing for fecal coliform or E. coli, to update requirements for nitrogen reduction verification, and for clarity. • Updated language for clarity.
-0120	**Proprietary treatment product registration—Process and requirements.**	• Updated description of product registration process to match the department's current practices. • Updated references to testing protocols. • Updated reference to fee WAC (*WAC 246-272*). • Added requirement that product manufacturers verify field performance according to departmental standards and guidance documents. Added requirement that manufacturers report reasons for product failure to meet field performance requirements to the department. • Added provision for department to require compliance plans for product manufacturers whose products have led to concerns of public health risks. • Updated language for clarity.
-0125	**Transition from the list of approved systems and products to the registered list –Treatment products.**	• Removed section –obsolete
-0130	**Bacterial reduction.**	• Created disinfection treatment levels (DL1, DL2, and DL3), distinct from other treatment levels (TLA, TLB, and TLC) to allow manufacturers more flexibility in registration treatment products. o Allows treatment products to be registered without verification of bacterial disinfection. o Allows registration of supplemental disinfection products. o Allows manufacturers and designers to combine components (that weren't originally tested together) in a treatment train to better meet the needs of certain sites and minimize costs.

WAC Section Number	Section Title	Draft Changes
		• Created new standard to allow for verification of bacterial reduction for DL1 via testing for E. coli. • Removed obsolete language referring to testing under previous versions of standards. • Added *NSF/ANSI Standard 385 Residential Wastewater Treatment Systems – Disinfection Mechanics* as a method to verify bacterial reduction for supplemental bacterial reduction products. • Updated language for clarity.
-0135	**Transition from the list of approved systems and products to the registered list –Bacterial reduction.**	• Removed section –obsolete
-0140	**Proprietary distribution products-Registration**	• Updated section title (caption). • Update language for clarity.
-0145	**Proprietary distribution product registration—Process and requirements.**	• Updated language to match the requirements and process in the treatment products section (-0120), and to include the department's current product registration practices. • Updated reference to fee WAC (*WAC 246-272-2000*). • Added provision for compliance plans for product manufacturers whose products have led to concerns of public health risks. • Updated language for clarity.
-0150	**Transition from the list of approved systems and products to the registered list -Distribution products.**	• Removed section –obsolete
-0170	**Product development permits.**	• Updated language for clarity.

WAC Section Number	Section Title	Draft Changes
-0175	**Transition from the experimental system program to application for product registration.**	• Removed section –obsolete
-0200	**Permit requirements.**	• Clarified when permits are and aren't required through introduction and use of new term, "Minor Repair." • Incorporated provisions from *WAC 332-130-145, Topographic elements on maps—Requirements* (DNR rule) into site plan requirements. These include: o A legend of symbols used o Plan scale and a graphic scale bar o Vertical datum used such as "assumed", "NAVD 88", "NSRS", or "unknown" o Name, signature, stamp and contact information of the designer o A statement on limitation of use indicating the site plan is not a survey • Added new requirement for site plans to include: o Horizontal separation to site features listed on Table IV o An elevation benchmark and relative elevations of system components • Updated language for clarity.
-0210	**Location.**	• Updated *Table IV, Minimum Horizontal Separations*, including the following changes to Items Requiring Setback: o Removed "Suction line" o Added "Non-public drinking water well" o Combined public surface water source with public drinking water spiring o Added "Non-public drinking water spring or surface water" o Added "Non-public, in ground, drinking water containment vessel" o Added "Easement for water supply line" o Added "Closed geothermal loop or pressurized non-potable water line" o Added "Lined stormwater detention pond" o Added "Unlined stormwater infiltration pond" o Added "Subsurface stormwater infiltration or dispersion component" o Made changes for clarity

WAC Section Number	Section Title	Draft Changes
		• Added statement that OSS components take precedence in cases of conflicts with stormwater components. • Removed option for LHO to reduce horizontal separation from OSS components to in-ground swimming pools to 2 feet. • Updated language for clarity.
-0220	**Soil and site evaluation.**	• Removed requirement to report Suction Lines on site and soil evaluation report. • Updated *Table V, Soil Type Descriptions*, for clarity. • Added option for LHO to require a replacement site and soil evaluation if the site has been altered since the initial site and soil evaluation. • Updated language for clarity.
-0230	**Design requirements—General.**	• Changed the design flow calculation section to distinguish between design flow calculation requirements (and related requirements) for a single-family residence with one additional dwelling served by one OSS, and requirements for multiple dwellings served by one OSS. • Updated *Table VI, Treatment Component Performance Levels and Method of Distribution*, to incorporate changes made to treatment standards (separating disinfection levels from other treatment levels). • Updated language for clarity.
-0232	**Design requirements—Septic tank sizing.**	• Changed minimum septic tank size from 900 gallons to 1000 gallons. • Added reference to *chapter 246-272C WAC On-site Sewage System Tanks*. • Updated language for clarity.
-0233	**Design requirements-Pump chamber sizing.**	• Added new section. • Defined requirements for pump chamber sizing. • Defined "Pump Basin."
-0234	**Design requirements—Soil dispersal components.**	• Modified *Table VIII, Hydraulic Loading Rates*, creating a new Colum B, to allow higher loading rates for effluent treated to a minimum of TL C and DL 3. • Changed requirement that reserve drainfield must always be full sized to allowing reserve drainfield to be reduced sized if primary drainfield is reduced size, at LHO discretion. • Added requirement that gravity beds have a minimum of one lateral for every 3 feet in width. • Removed obsolete references. • Updated language for clarity.

WAC Section Number	Section Title	Draft Changes
-0238	**Design requirements—Facilitate operation, monitoring and maintenance.**	• Added requirement to install at least one observation port on each SSAS lateral. • Added requirement that disinfection units must include an easy-access, freefall sampling port. • Clarified that subsurface drip systems are excluded from the requirement to have monitoring ports at the distribution device and infiltrative surface. • Updated language for clarity.
-0250	**Installation**	• Clarified restrictions on when LHO may allow a resident owner of a SFR to install an OSS, changing language from restriction when adjacent to marine shoreline to specific distances from marine water and surface water and precluding repairs meeting Table X. • Added reference to *chapter 246-272C WAC On-site Sewage System Tanks*. • Updated language for clarity.
-0260	**Inspection**	• Added provisions from *Engrossed Substitute Senate Bill 5503 (2019)*, now codified as *RCW 43.20.065*, that: o Require Local Health Officer (LHO) or a certified professional inspector to coordinate and obtain permission from owner before conducting an inspection; and o Prohibit LHO's from requiring easements as a permit condition for inspection or maintenance for OSS that are on the same property that they serve. • Defined minimum procedures for property transfer inspections and required routine OSS evaluations. • Added requirement that property transfer inspections are reported to LHJ on a LHO approved form. • Clarified that LHJ may require additional inspection report for routine inspections. • Updated language for clarity and consistency.
-0265	**Record drawings**	• Updated language for clarity.
-0270	**Operation, monitoring, and maintenance-Owner Responsibilities**	• Added requirement for owner to request assistance from LHJ if OSS fails. • Added requirement for owner to get approval from Local Health Officer to begin use of an OSS. • Added requirement for owner to obtain a professional inspection of OSS preceding property transfer. This requirement goes into effect 2 years after effective date of rule. Included provisions that LHO <u>may</u>: o Remove the requirement for inspection preceding property transfer inspection if LHJ has evidence that the OSS is in compliance with routine inspections (required in -0270(1)(e)); o Verify the results of the property transfer inspection; and o Require additional inspections and requirements.

WAC Section Number	Section Title	Draft Changes
		• Added requirement that results of property transfer inspection are provided to LHJ on a form approved by the LHO. • Added provision that LHO may require a compliance schedule for repair of failures discovered during property transfer inspections. • Added prohibition on owners using any remediation process unless it is approved by the LHO. • Updated language for clarity and consistency.
-0278	**Remediation**	• Added new section. • Added option that Local Health Officer may develop a remediation policy. • Added minimum requirements for remediation. • Added requirement for department to maintain a guidance document on remediation.

-0280	**Repairs of failures**	• Clarified that the LHO may permit OSS that meet Table X only in cases of repairs.
		• Added provisions from *Engrossed Substitute Senate Bill 5503 (2019)*, now codified in *RCW 43.20.065*, that require:
		  ○ Priority be given to allowing a repair or replacement of a conventional OSS, consisting of a septic tank and drainfield, with a similar conventional OSS that complies with standards and provides comparable long-term treatment;
		  ○ Allowing repairs using the least expensive alternative that meets standards; and
		  ○ That LHO not impose or allow the imposition of more stringent performance requirements of equivalent OSS on private entities than public entities.
		• Added requirement that LHO evaluate all unpermitted discharges to determine if they pose a public health threat. If determined to be a public health threat the LHO shall require a compliance schedule.
		• Added requirement that LHO report failures within 200 feet of shellfish growing areas to the department.
		• Added provision that LHO may require a compliance schedule for failures discovered during property transfer inspections.
		• Clarified owner's options in cases of failure.
		• Added new *Table IX Options and Methods to Address an OSS Failure* to explain owner's option in case of OSS failure.
		• Added requirement that OSS designer evaluate the causes of failure prior to designing the repair or replacement of an OSS.
		• Added requirement that OSS designer minimize impact of phosphorus discharge in areas where phosphorus has been identified as a contaminant of concern in the LMP.

WAC Section Number	Section Title	Draft Changes
		• Updated and renamed *Table X, Treatment Component Performance Levels for Repair of OSS Not Meeting Vertical and Horizontal Separations*, to incorporate changes made to treatment standards (separating disinfection levels from other treatment levels) and to correct inconsistencies with WAC 246-272A-0230. • Updated language and structure for clarity and consistency.
-0282	**Minor repair of malfunctions**	• Added new section. • Added provision that LHO may require a permit for a minor repair of a malfunction. • Added requirement that LHOs require the minor repair of a malfunction to a functioning state. • Added option for LHO to require owner to submit information regarding minor repairs.
-0290	**Expansions**	• Updated language for consistency and clarity.
-0300	**Abandonment**	• Clarified that tanks and other sewage containers can be removed or abandoned in place. • Added requirement that empty tanks be filled with soil or gravel if abandoned in place. • Added requirement to grade site to surroundings. • Clarified process. • Updated language for clarity.
-0320	**Developments, subdivisions, and minimum land area requirements**	• Changed title of Table XI. • Increased minimum land area requirements in *Table XI, Minimum Land Area Requirement For Each Single-Family Residence or Unit Volume of Sewage,* by 220 – 1000 square feet, depending on soil type and water source. • Added "Minimum Usable Land Area" requirement to Table XI. This is a new requirement. (See definitions for definition of minimum usable land area.) • Removed references to Method I and Method II lot sizing methods. • Added new methodology and new *Table XII, Maximum Allowable Total Nitrogen (TN) Load Per Day by Type of Water Supply, Soil Type, and Land Area* for developments that do not meet Table XI's requirement. • Changed minimum lot size from 12,500 to 13,000 sq ft for nonpublic water supplies for all new lots. • Reduced the maximum unit volume of sewage per day per acre from 3.5 to 3.35 for lots served by public water supplies for both Table XI and Table XII. • Added option for drinking water well water supply protection zones on new subdivisions to be located on multiple lots (to cross lot lines) if a copy of recorded restrictive covenant is provided to each affected property owner.

WAC Section Number	Section Title	Draft Changes
		• Added clarifying language that LHOs may allow permitting of an OSS on a preexisting lot of record that does not meet current minimum land area requirements only if it meets all requirements of chapter 246-272A WAC without the use of a waiver under WAC 246-272A-0420. • Updated language and structure for clarity and consistency.
-0340	**Certification of installers, pumpers, and maintenance service providers.**	• Added requirement that Local Health Officer (LHO) establish approval procedures for maintenance service providers within one year after the effective date of the rule. Added allowance that LHO may allow reciprocity from other local health jurisdictions or third-party certification programs. • Clarified that LHO has authority to establish certification process for owners to inspect their OSS. • Updated language for clarity and consistency.
-0400	**Technical advisory group.**	• Updated section title (caption). • Added requirement that Technical Advisory Group (TAG) members are selected for three-year terms. • Added new professions to the list of potential TAG members. • Updated language for clarity and consistency with remainder of rule.
-0410	**Policy advisory group.**	• Updated section title (caption). • Added requirement that Policy Advisory Group (PAG) members are selected for three-year terms. • Updated language for clarity and consistency.
-0420	**Waiver of state regulations.**	• Added requirement that department publish an annual report summarizing waivers issued over the previous year. • Updated language for clarity and consistency with remainder of rule.

Board Authority

RCW 43.20.050

Powers and duties of state board of health—Rule making—Delegation of authority—Enforcement of rules.

(1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules for group A public water systems, as defined in RCW 70A.125.010, necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants;

(b) Adopt rules as necessary for group B public water systems, as defined in RCW 70A.125.010. The rules shall, at a minimum, establish requirements regarding the initial design and construction of a public water system. The state board of health rules may waive some or all requirements for group B public water systems with fewer than five connections;

(c) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains;

(d) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, and cleanliness in public facilities including but not limited to food service establishments, schools, recreational facilities, and transient accommodations;

(e) Adopt rules for the imposition and use of isolation and quarantine;

(f) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and

conveyance of remains of deceased persons, and such other sanitary matters as may best be controlled by universal rule; and

(g) Adopt rules for accessing existing databases for the purposes of performing health related research.

(3) The state board shall adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day.

(4) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

(5) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he or she shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

(6) The state board may advise the secretary on health policy issues pertaining to the department of health and the state.

[**2021 c 65 § 37**; **2011 c 27 § 1**; **2009 c 495 § 1**; **2007 c 343 § 11**; **1993 c 492 § 489**; **1992 c 34 § 4**. Prior: **1989 1st ex.s. c 9 § 210**; **1989 c 207 § 1**; **1985 c 213 § 1**; **1979 c 141 § 49**; **1967 ex.s. c 102 § 9**; **1965 c 8 § 43.20.050**; prior: (i) **1901 c 116 § 1**; **1891 c 98 § 2**; RRS § 6001. (ii) **1921 c 7 § 58**; RRS § 10816.]

WASHINGTON STATE BOARD OF HEALTH

Date: January 9, 2023

To: Washington State Board of Health Members

From: Keith Grellner, Board Chair

Subject: Petition for Rulemaking – Environmental Health and Safety Standards for Primary and Secondary Schools, chapter 246-366A WAC

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 December 19, 2022 the Board received a petition for rulemaking from Representative Gerry Pollet requesting the Board take action to revise chapter 246-366A WAC, Environmental Health and Safety Standards for Primary and Secondary Schools, to reflect more stringent standards for testing and remediation of lead in school drinking water. The petition states that WAC 246-366A-130, Water quality monitoring – Lead, should reflect requirements of Engrossed Second Substitute House Bill (E2SHB) 1139 (Chapter 154, Laws of 2021) codified in RCW 28A.210.410.

The Board has authority under RCW 43.20.050 to adopt rules related to environmental conditions in schools, including but not limited to heating, lighting, ventilation, sanitary facilities, and cleanliness. In 2009, the Board adopted chapter 246-366A WAC, which establishes a set of minimum environmental health and safety standards for school facilities to promote healthy and safe school environments.[1]

WAC 246-366A-130 sets requirements for school officials to sample plumbing fixtures that are regularly used for drinking or cooking for lead contamination. Initial monitoring must be conducted between one and four years after the effective date of the rules, depending on sampling method and school facility type. Ongoing monitoring must be conducted every five to nine years depending on the school facility type. Samples resulting in lead levels above 20.0 parts per billion (ppb) must be immediately shut off or made inoperable, and remediate by providing bottled water, manual or automatic flushing, fixture replacement, or treatment. School officials must also notify school facility staff, students, parents, and the local health officer within five business days of

[1] Chapter 246-366A WAC was intended to replace chapter 246-366 WAC, Primary and Secondary Schools, with more modern health and safety standards. Until chapter 246-366A WAC is implemented, chapter 246-366 WAC remains in effect. Chapter 246-366 does not contain specific requirements for lead in drinking water, but requires compliance with public water system regulations.

(continued on the next page)

receiving sampling results over 20.0 ppb. These results must also be made available upon request.

RCW 28A.210.410 requires schools to coordinate with the Department of Health (Department) or contract for sampling and testing for lead contamination in drinking water outlets. Schools must shut off water to outlets that have lead concentrations that exceed 15 ppb and develop an action plan for test results exceeding five ppb. Action plans must:

- Be developed in consultation with the Department or their local health jurisdiction and the Office of the Superintendent of Public Instruction
- Describe mitigation measures implemented since the test result was received
- Include a schedule of remediation activities and post-remediation retesting to confirm lead concentrations have been reduced

Schools must also provide the public with notice and opportunity to comment on action plans, and post action plans on their websites.

Chapter 246-366A has not been implemented due to restrictions enacted by the Legislature related to concerns with the financial impact of the new rules. The 2009-2011 Washington state operating budget bill included a proviso prohibiting the Department and the Board from implementing new or amended school rules until the legislature takes action to fund implementation:

> The department of health and the state board of health shall not implement any new or amended rules pertaining to primary and secondary school facilities until the rules and a final cost estimate have been presented to the legislature, and the legislature has formally funded implementation of the rules through the omnibus appropriations act or by statute.

Based on the proviso, the Board filed a Rule-Making Order (CR-103) on December 22, 2009, specifying a July 1, 2010 effective date for these rules. The Board agreed to review the actions of the legislature at the end of each session to determine whether any portions of the rules could be implemented and to amend the CR-103 accordingly. The effective date has been delayed eight times, most recently on June 24, 2022 (WSR 22-14-021), as each operating budget bill since the 2009-2011 biennium has included the proviso.

The petition asserts that the legislature has fully funded implementation of the new standards for lead testing, remediation, and notification; therefore, the Board is no longer restricted from adopting and implementing rules that reflect these more protective standards.

Per the fiscal note, E2SHB 1139 had the following estimated operating and capital budget expenditures:

	Fiscal Biennium		
	2021-23	2023-25	2025-27

Total Estimated Operating Expenditures	$2,826,714	$2,810,000	$3,688,000
Total Estimated Capital Budget Expenditures	$2,776,017	$2,760,642	$2,760,642

The 2021-23 biennium operating budget[2] appropriated $2,809,000 to the Department to implement E2SHB 1139. Additionally, $500,000 for both fiscal year 2020 and 2021 was appropriated to the Department to conduct testing for lead in public schools. The 2021-23 biennium capital budget[3] appropriated $3,598,000 to the Office of the Superintendent of Public Instruction (OSPI) to provide grants to school districts, charter schools, and state-tribal education compact schools for lead remediation. Grants for lead remediation costs may not exceed $100,000. Additionally, $128,000 of appropriated funds were provided solely for OSPI to study lead-contaminated drinking water remediation and mitigation costs associated with complying with statutory lead remediation standards for schools. Further appropriations to implement E2SHB 1139 were not included in 2022 supplemental operating and capital budgets.

It is unclear at this time whether funding provided in the 2021-23 biennium to implement E2SHB 1139 was sufficient to fulfill statutory requirements for lead remediation and whether future funding is available for required ongoing testing and remediation. It does not appear that the legislature has formally funded implementation of relevant sections the rules through the omnibus appropriations act or by statute, in accordance with the budget proviso restricting implementation of chapter 246-366A WAC which was included in the 2021-23 supplemental operating budget[4].

However, because Chapter 246-366A is not currently in effect, there is no conflict between the rules and the requirements of RCW 28A.210.410 requiring an immediate revision to the rules.

I have invited Kaitlyn Campbell, Board Staff, to provide additional information from the petitioner and outline the Board's options for responding to the petition.

Recommended Board Actions:

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

The Board declines the petition for rulemaking to revise applicable sections of chapter 246-366A WAC to reflect testing, remediation, and notification requirements for lead in school drinking water under RCW 28A.210.410 for the reasons articulated by Board members. The Board directs staff to notify the petitioner of the Board's decision.

[2] Engrossed Substitute Senate Bill 5092, Chapter 334, Laws of 2021
[3] Substitute House Bill 1080, Chapter 332, Laws of 2021
[4] Engrossed Substitute Senate Bill 5693, Chapter 297, Laws of 2022

OR

The Board accepts the petition for rulemaking to revise applicable sections of chapter 246-366A WAC to reflect testing, remediation, and notification requirements for lead in school drinking water under RCW 28A.210.410 for the reasons articulated by Board members. The Board directs staff to notify the petitioner of its decision and to file a CR-101, Proposal of Inquiry, under its authority in RCW 43.20.050.

Staff
Kaitlyn Campbell

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.

Washington State Board of Health

Rulemaking Petition, School Environmental Health and Safety, Chapter 246-366A WAC

January 9, 2023

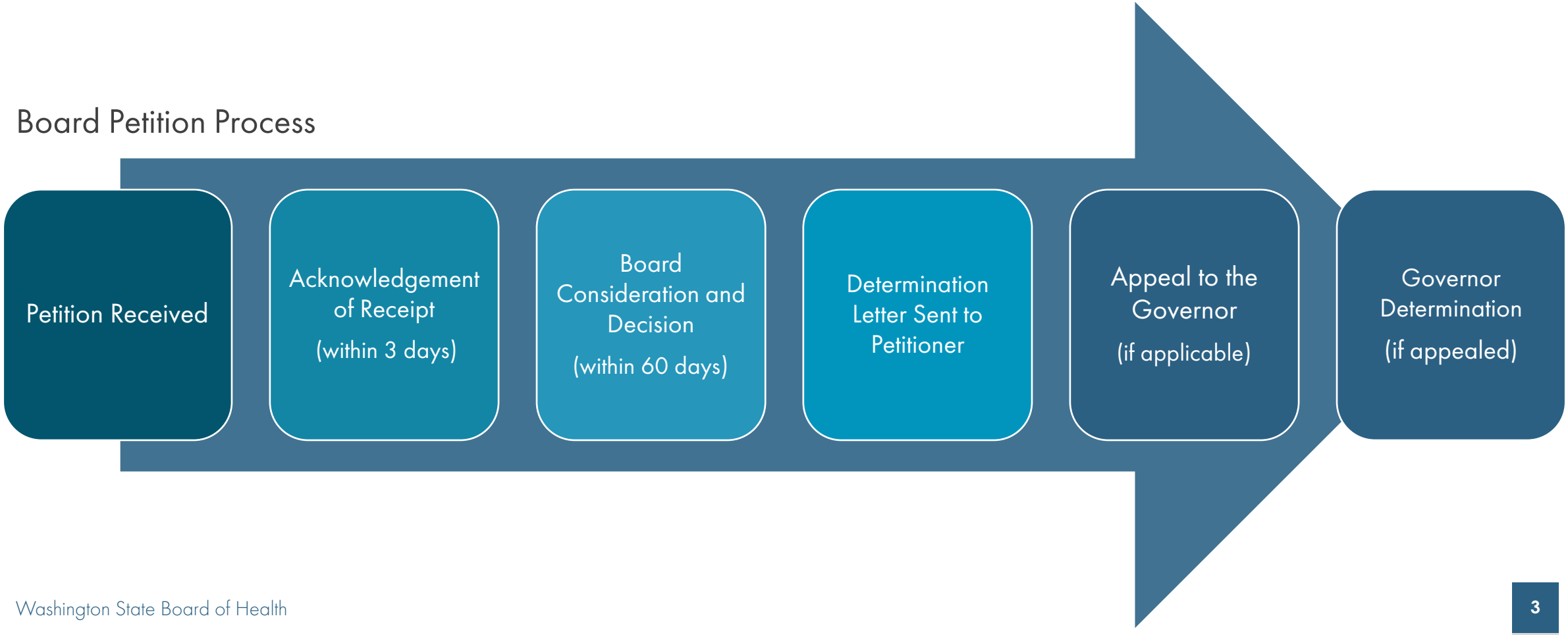
Kaitlyn Campbell, MPA

Policy Advisor, State Board of Health

Background

Under the Administrative Procedures Act, any person may petition a state agency to adopt, repeal, or amend any rule within its authority.

Board Petition Process



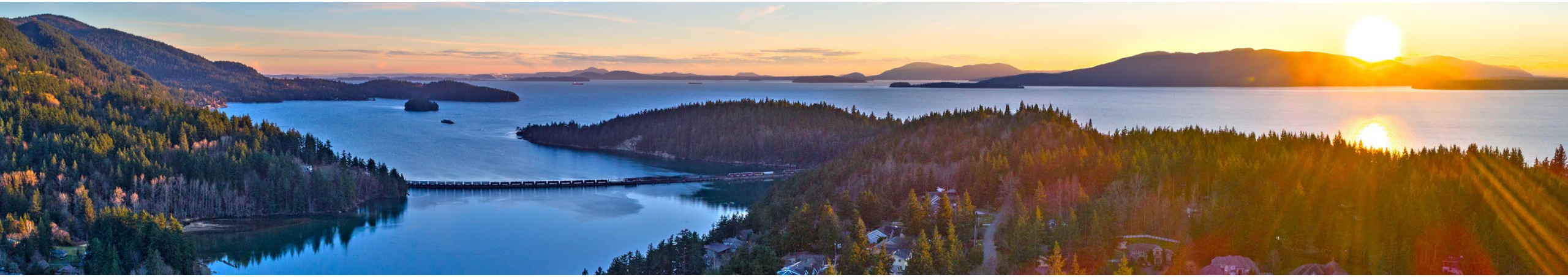
Petition Request

- On December 19, 2022, the Board received a petition for rulemaking requesting the Board revise chapter 246-366A WAC, Environmental Health and Safety Standards for Primary and Secondary Schools, to reflect more stringent standards for testing and remediation of lead in school drinking water in law.
- The petition asserts that the legislature has fully funded implementation of the new standards for lead testing, remediation, and notification; therefore, the Board is no longer restricted from implementing this section of the suspended school rules.

School Environmental Health & Safety Rules

- Chapter 246-366A WAC establishes a set of minimum environmental health and safety standards for school facilities to promote healthy and safe school environments
- These rules provide minimum environmental health and safety standards for all schools in Washington
- Originally adopted in 2009, the rules have not been implemented due to restrictions enacted by the Legislature related to concerns with the financial impact of the rules

Budget Proviso



The department of health and the state board of health shall not implement any new or amended rules pertaining to primary and secondary school facilities until the rules and a final cost estimate have been presented to the legislature, and the legislature has formally funded implementation of the rules through the omnibus appropriations act or by statute.

Engrossed Second Substitute House Bill 1139 (2021)

- Requires primary and secondary schools to regularly sample, test, and remediate lead in drinking water in buildings that have been built (or plumbing was replaced) prior to 2016.
- Schools must notify students, families, and staff of lead testing results, as well as adopt a school action plan if results exceed lead levels of 5 parts per billion (ppb).
- DOH must develop and publish a two-year sampling and testing plan for schools, issue waivers to community water systems from requirements in the federal lead and copper rule (40 C.F.R Part 141.92), and develop and make available technical guidance for schools.
- The Board may define "elevated lead level" at a concentration of less than 5 ppb in rule if supported by scientific evidence after July 1, 2030.

Lead Testing & Remediation Standards

WAC 246-366A-130

- Must sample plumbing fixtures regularly used for drinking or cooking
- Initial monitoring must be conducted 1-4 years after the effective date of the rules, depending on sampling method and school facility type
- Ongoing monitoring must be conducted every 5-9 years, depending on the school facility type
- Fixtures with lead levels exceeding 20.0 ppb must be immediately shut off or made inoperable; must remediate by providing bottled water, manual or automatic flushing, fixture replacement, or treatment
- School officials must notify school facility staff, students, parents, and the local health officer within 5 business days of receiving sampling results over 20.0 ppb
- Results must also be made available upon request

RCW 28A.210.410

- Schools must coordinate with DOH or contract for sampling and testing for lead contamination in drinking water outlets
- Outlets exceeding 15 ppb must be shut off until mitigated
- Schools must develop an action plan for results exceeding 5 ppb. Action plans must:
  - Be developed in consultation with the DOH or LHJ and OSPI
  - Describe mitigation measures implemented since the test result was received
  - Include a schedule of remediation activities and post-remediation retesting to confirm lead concentrations have been reduced
- Schools must provide the public with notice and opportunity to comment on action plans, and post action plans on their websites.
- Retesting must occur no less than every five years

Considerations

- The petition asserts that the legislature has fully funded implementation of the new standards for lead testing, remediation, and notification; therefore, the Board is no longer restricted from adopting and implementing rules that reflect these more protective standards

E2SHB 1139 Fiscal Note Estimates & Funding

Fiscal Note Estimates

	Biennium		
	2021-2023	2023-2025	2025-2027
Total Estimated Operating Expenditures	$2,826,714	$2,810,000	$3,688,000
Total Estimated Capital Budget Expenditures	$2,776,017	$2,760,642	$2,760,642

Appropriated Funding

	Biennium		
	2021-2023	**2023-2025**	**2025-2027**
Operating Budget	$2,809,000 + $500,000 (FY 21)	TBD	TBD
Capital Budget	$3,598,000 + $128,000	TBD	TBD

Additional Considerations

- It is unclear at this time whether funding provided in the 2021-23 biennium to implement E2SHB 1139 was sufficient to fulfill statutory requirements
- It does not appear that the legislature has formally funded implementation of relevant sections the rules through the omnibus appropriations act or by statute, in accordance with the budget proviso
- There is no conflict between chapter 246-366A and RCW 28A.210.410 because the rules are not currently in effect

Board Discussion

Would the Board consider accepting or denying this petition? Why or why not?

Discussion and justification for the Board's decision will be included in the Board's determination letter to the petitioner.

THANK YOU

WASHINGTON STATE BOARD OF HEALTH

To request this document in an alternate format, 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

Washington State Board of Health

Rulemaking Petition, School Environmental Health and Safety, Chapter 246-366A WAC

June 9, 2023

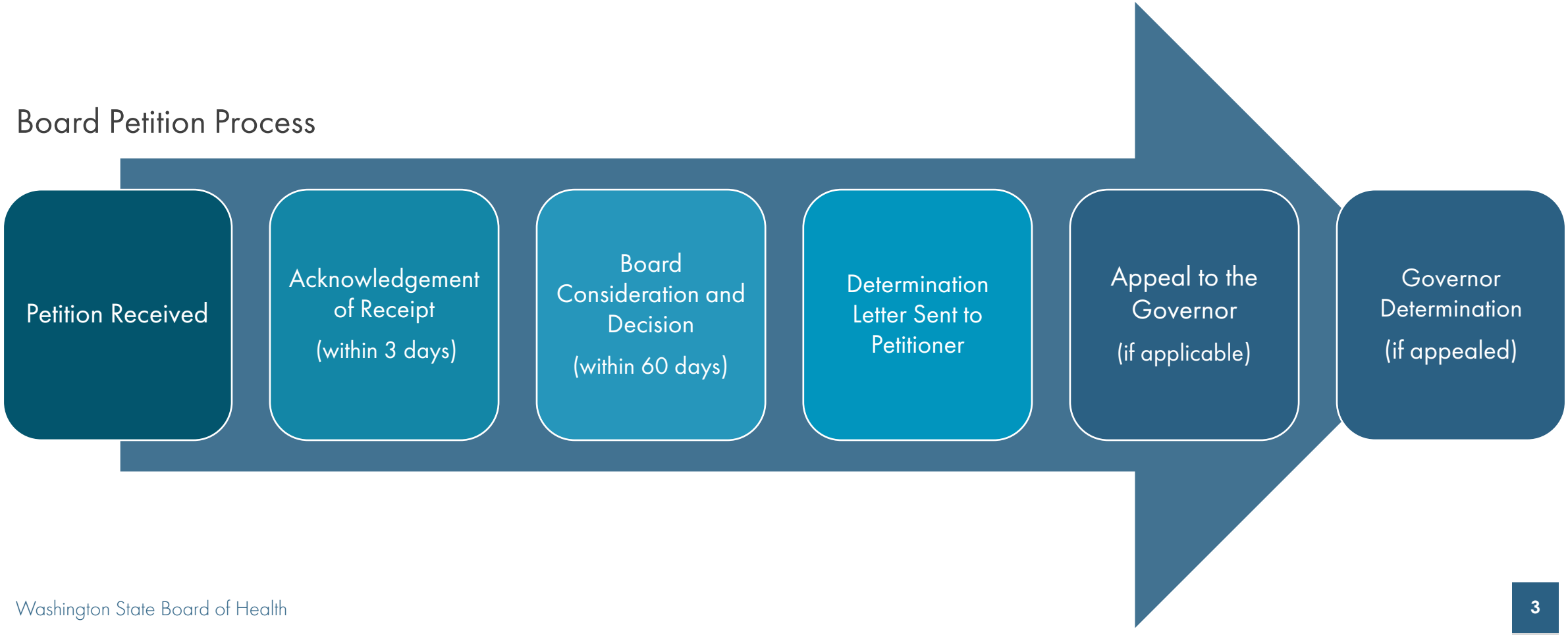
Kaitlyn Campbell, MPA

Policy Advisor, State Board of Health

Background

Under the Administrative Procedures Act, any person may petition a state agency to adopt, repeal, or amend any rule within its authority.

Board Petition Process



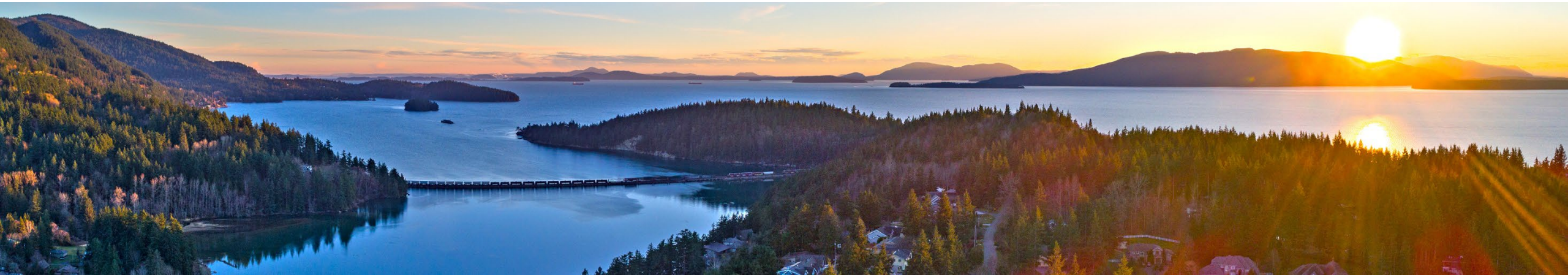
Petition Request

- On December 19, 2022, the Board received a petition for rulemaking requesting the Board revise chapter 246-366A WAC, Environmental Health and Safety Standards for Primary and Secondary Schools, to reflect more stringent standards for testing and remediation of lead in school drinking water in law.
- The petition asserts that the legislature has fully funded implementation of the new standards for lead testing, remediation, and notification; therefore, the Board is no longer restricted from implementing this section of the suspended school rules.

School Environmental Health & Safety Rules

- Chapter 246-366A WAC establishes a set of minimum environmental health and safety standards for school facilities to promote healthy and safe school environments
- These rules provide minimum environmental health and safety standards for all schools in Washington
- Originally adopted in 2009, the rules have not been implemented due to restrictions enacted by the Legislature related to concerns with the financial impact of the rules

Budget Proviso



The department of health and the state board of health shall not implement any new or amended rules pertaining to primary and secondary school facilities until the rules and a final cost estimate have been presented to the legislature, and the legislature has formally funded implementation of the rules through the omnibus appropriations act or by statute.

Engrossed Second Substitute House Bill 1139 (2020)

- Requires primary and secondary schools to regularly sample, test, and remediate lead in drinking water in buildings that have been built (or plumbing was replaced) prior to 2016.
- Schools must notify students, families, and staff of lead testing results, as well as adopt a school action plan if results exceed lead levels of 5 parts per billion (ppb).
- DOH must develop and publish a two-year sampling and testing plan for schools, issue waivers to community water systems from requirements in the federal lead and copper rule (40 C.F.R Part 141.92), and develop and make available technical guidance for schools.
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Lead Testing & Remediation Standards

WAC 246-366A-130

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- Fixtures with lead levels exceeding 20.0 ppb must be immediately shut off or made inoperable; must remediate by providing bottled water, manual or automatic flushing, fixture replacement, or treatment
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- Results must also be made available upon request

RCW 28A.210.410

- Schools must coordinate with DOH or contract for sampling and testing for lead contamination in drinking water outlets
- Outlets exceeding 15 ppb must be shut off until mitigated
- Schools must develop an action plan for results exceeding 5 ppb. Action plans must:
  - Be developed in consultation with the DOH or LHJ and OSPI
  - Describe mitigation measures implemented since the test result was received
  - Include a schedule of remediation activities and post-remediation retesting to confirm lead concentrations have been reduced
- Schools must provide the public with notice and opportunity to comment on action plans, and post action plans on their websites.
- Retesting must occur no less than every five years

Considerations

- The petition asserts that the legislature has fully funded implementation of the new standards for lead testing, remediation, and notification; therefore, the Board is no longer restricted from adopting and implementing rules that reflect these more protective standards

E2SHB 1139 Fiscal Note Estimates & Funding

Fiscal Note Estimates

	Biennium		
	2021-2023	2023-2025	2025-2027
Total Estimated Operating Expenditures	$2,826,714	$2,810,000	$3,688,000
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Appropriated Funding

	Biennium		
	2021-2023	**2023-2025**	**2025-2027**
Operating Budget	$2,809,000 + $500,000 (FY 21)	TBD	TBD
Capital Budget	$3,598,000 + $128,000	TBD	TBD

Additional Considerations

- It is unclear at this time whether funding provided in the 2021-23 biennium to implement E2SHB 1139 was sufficient to fulfill statutory requirements
- It does not appear that the legislature has formally funded implementation of relevant sections the rules through the omnibus appropriations act or by statute, in accordance with the budget proviso
- There is no conflict between chapter 246-366A and RCW 28A.210.410 because the rules are not currently in effect

Board Discussion

Would the Board consider accepting or denying this petition? Why or why not?

Discussion and justification for the Board's decision will be included in the Board's determination letter to the petitioner.

THANK YOU

WASHINGTON STATE BOARD OF HEALTH

To request this document in an alternate format, 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

To: Board of Health, Keith Grellner, Chair; wsboh@sboh.wa.gov
FR: Rep. Gerry Pollet Gerry.Pollet@leg.wa.gov
Date: December 17, 2022
RE: Incompatibility of BoH Rule WAC 246-366A-130 with Chapter 154 Laws of 2021 concerning lead in school drinking water

It has recently come to my attention that the Board of Health adopted rules (WAC 246-366A-130) effective August 1, 2023 regarding testing, notice and remediation for lead in school water.

As Members of the Board are aware, I spent several years developing and shepherding HB 1123 into law as Chapter 154, Laws of 2021. The legislation was based on very substantial evidence that exposure to levels of lead in drinking water at 15 or 20 ppb may result in serious health, learning and cognitive deficits. The Legislature recognized in Section 1(1) of the "Bruce Speight protect children from being exposed to lead in school drinking water act":

> "there is no known safe level of lead in a child's blood. Even low levels of lead exposure can cause permanent cognitive, academic, and behavioral difficulties in children."

Therefore, with great deliberation, the legislature mandated that schools remediate any potable water faucet or fountain which tests show exceed 5 ppb.

For any fixture which tests reveal lead at levels above 15 ppb, HB 1123 mandates that the school district remove the fixture from service as soon as practicable. HB 1123 Sec. 2(3)(4). RCW 28A.210.410(4).

For all fixtures that test above **5 ppb** ("elevated lead level"), the school district must adopt an action plan to replace or remediate. Section 2(7)(d). RCW 28A.210.410(5).

The Board readopted WAC 246-366A-130 with far less protective action levels than mandated by the Legislature. The Board's new rule only references an action level of 20 ppb, which is four times less protective than the level of 5ppb mandated by the Legislature. Evidence shows that blood lead levels rise substantially when children ingest water with lead above 5 ppb.

Further, the Board's rule only requires communicating to parents and the school community when test samples exceed 20 ppb. WAC 246-366A-130 (6).

However, the law clearly requires all test results be available on a website if any of a school's faucets test above 5 ppb along with an annual communication of test results including a discussion that no level of lead in a child's drinking water is "safe." Section 2(3). RCW 28A.210.410(3) and RCW 28A.210.410(6).

The Legislature adopted the new standards and fully funded their implementation. This removes the school water lead rules from any restriction in the operating budget preventing the Board from adopting and implementing any school health rules that are not funded by the Legislature.

Thus, the Board should be adopting rules that reflect HB 1123, the Bruce Speight protect children from being exposed to lead in school drinking water act, codified in RCW 28A.210.

Adopting rules that are not compliant with current law and do not reflect the substantial evidence on lead in children's drinking water is likely to add significant confusion for implementation and for evaluation of our program by other states, the federal government or researchers.

Campbell, Kaitlyn N (SBOH)

From: DOH WSBOH
Sent: Tuesday, December 20, 2022 8:28 AM
To: Davis, Michelle (SBOH); Grellner, Keith (DOHi); Campbell, Kaitlyn N (SBOH)
Subject: FW: Board of Health's school drinking water and lead rule does not reflect legislative mandate
Attachments: BoH rules lead in school water do not reflect new legislation Pollet to BoH 12--19-22.pdf

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From: Pollet, Rep. Gerry <Gerry.Pollet@leg.wa.gov>
Sent: Monday, December 19, 2022 7:53 AM
To: DOH WSBOH <WSBOH@SBOH.WA.GOV>
Cc: Grupp, Emily <Emily.Grupp@leg.wa.gov>; Clogston, Mary <Mary.Clogston@leg.wa.gov>; Tania M. Busch Isaksen <tania@uw.edu>; Palosaari, Alice <Alice.Palosaari@leg.wa.gov>; Riccelli, Marcus <marcus.riccelli@leg.wa.gov>; Steve Gilbert <sgilbert@innd.org>
Subject: Board of Health's school drinking water and lead rule does not reflect legislative mandate

External Email

Chair Grellner and Board,

In reviewing the UW Department of Environmental and Occupational Health Sciences 'report on standards and programs addressing toxics in schools, including PCBs, I reviewed the Board of Health's recently readopted standards for lead in school drinking water. These now take effect August 1, 2023. However, as the attached memo details, these rules are far out of date and do not reflect the mandate of the Legislature for school districts to take action when lead is detected at 5 ppb, mandatory communications on testing and when faucets or fountains must be removed from service. This legislation was based on extensive evidence, including formal literature reviews, presented to the Legislature documenting that levels above 5 ppb have serious potential to cause harm to children's health and cognitive development. However, the Board's rules are based on action levels starting at 20 ppb.

The attached memo discusses the evidence and the sharp disparities between the Board's rule and the 2021 legislation. I understand that the Board has had to defer all school health rules repeatedly due to a budget proviso readopted every biennium since 2009 that bars evidence based protections for children's health from being adopted in new rules by the Board unless fully funded in advance by the Legislature. The lead in school water legislation is fully funded. In the memo, I request that the Board take action to revise the rule to reflect the legislative mandate based on far more protective health standards than the board was proposing prior to 2009.

I would be glad to discuss this with you.
Sincerely,

Gerry
Representative Gerry Pollet
46th District (Northeast and North Seattle)
Member: Appropriations, Education, College and Workforce Development, Rules Committees

Chair, Joint Legislative Audit and Review Committee

Please email me if you'd like to join one of my Saturday morning drop-in discussions "**Traveling Town Halls**." Notice is also posted on my website and FB page during the legislative session. I hold these most Saturdays from 9:30 -11am during Session since constituents shouldn't have to go to Olympia to see your Representative. I hold them monthly when out of Session.

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1139

Chapter 154, Laws of 2021

67th Legislature
2021 Regular Session

SCHOOLS—LEAD IN DRINKING WATER

EFFECTIVE DATE: July 25, 2021

Passed by the House April 14, 2021
Yeas 91 Nays 5

LAURIE JINKINS

Speaker of the House of Representatives

Passed by the Senate April 11, 2021
Yeas 48 Nays 0

DENNY HECK

President of the Senate

Approved May 3, 2021 2:08 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1139** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 3, 2021

Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1139

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By House Appropriations (originally sponsored by Representatives Pollet, Callan, Berg, Dolan, Ryu, Leavitt, Bronoske, Ramel, Ramos, Lekanoff, Stonier, Ortiz-Self, Frame, Goodman, Rule, Bergquist, Berry, Wylie, J. Johnson, Taylor, and Valdez)

READ FIRST TIME 02/22/21.

AN ACT Relating to taking action to address lead in school drinking water; adding a new section to chapter 28A.210 RCW; adding new sections to chapter 43.70 RCW; adding a new section to chapter 43.20 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The legislature recognizes that the United States environmental protection agency and centers for disease control and prevention acknowledge that there is no known safe level of lead in a child's blood. Even low levels of lead exposure can cause permanent cognitive, academic, and behavioral difficulties in children. The American academy of pediatrics recommends government action to ensure that the lead concentration in drinking water at schools does not exceed one part per billion.

(2) The legislature finds that the department of health sampled and tested drinking water outlets in 551 elementary schools between 2017 and 2020. 82 percent of these schools had lead contamination of five or more parts per billion in one or more drinking water outlets and 49 percent of these schools had lead contamination of 15 or more parts per billion in one or more drinking water outlets.

(3) The legislature acknowledges that the department of health was appropriated $1,000,000 in the 2019-2021 fiscal biennium to

continue the testing for lead contamination in school drinking water. The legislature also finds that the office of the superintendent of public instruction was appropriated funds in the 2019-2021 fiscal biennium for the healthy kids/healthy schools initiative. Part of these funds are for the purpose of distributing grants to school districts for remediation of elevated lead levels in drinking water. The legislature encourages districts to apply for these grants when lead test results reveal elevated lead levels, which are lead levels above five parts per billion.

(4) The legislature acknowledges the historically inequitable distribution of lead exposure for communities of color and of low socioeconomic status and plans to make a priority the protection of children from the dangers of lead exposure through school drinking water. The legislature, therefore, intends to require that drinking water outlets in elementary and secondary school buildings built, or with all plumbing replaced, before 2016 be tested for the presence and level of lead contamination by June 30, 2026, and every five years thereafter. The legislature also intends to require that schools notify the school community of lead test results and develop action plans for remediation if test results exceed the health-based standard of five parts per billion.

(5) The legislature recognizes that the youngest children are the most vulnerable to lead exposure and that many of these children spend significant amounts of time at child care facilities.

(6) This act is named for the director of the Washington public interest research group who developed and advocated for this legislation before dying of cancer in 2019 and may be known as the Bruce Speight protect children from being exposed to lead in school drinking water act.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.210 RCW to read as follows:

(1) This section applies to schools with buildings built, or with all plumbing replaced, before 2016.

(2) With respect to sampling and testing for lead contamination at drinking water outlets, a school shall either:

(a) Cooperate with the department so that the department can conduct sampling and testing as required under section 3 of this act; or

(b) Contract for sampling and testing that meets the requirements of section 3 of this act and submit the test results to the department according to a procedure and deadlines determined by the department.

(3)(a) Except as provided in (b) of this subsection, a school shall communicate annually with students' families and staff about lead contamination in drinking water. The school shall consult with the department or a local health agency on the contents of the communication, which must include: The health effects of lead exposure; the website address of the most recent lead test results; and information about the school's plan for remedial action to reduce lead contamination in drinking water. Schools are encouraged to provide the communication as early in the school year as possible.

(b) The annual communication described under (a) of this subsection is not required if initial testing, or once postremediation testing, does not detect an elevated lead level at any drinking water outlet.

(4) As soon as practicable after receiving a lead test result that reveals a lead concentration that exceeds 15 parts per billion at a drinking water outlet, and until a lead contamination mitigation measure, such as use of a filter, is implemented, the school must shut off the water to the outlet.

(5)(a) For a lead test result that reveals an elevated lead level, as defined in subsection (7) of this section, at one or more drinking water outlets, the school's governing body shall adopt a school action plan in compliance with the requirements of this subsection.

(b) The school action plan must:

(i) Be developed in consultation with the department or a local health agency regarding the technical guidance, and with the office of the superintendent of public instruction regarding funding for remediation activities;

(ii) Describe mitigation measures implemented since the lead test result was received;

(iii) Include a schedule of remediation activities, including use of filters, that adhere to the technical guidance. The schedule may be based on the availability of state or federal funding for remediation activities; and

(iv) Include postremediation retesting to confirm that remediation activities have reduced lead concentrations at drinking water outlets to below the elevated lead level.

(c) The school action plan may include sampling and testing of the drinking water entering the school when the results of testing for lead contamination at drinking water outlets within the school indicate that the infrastructure of the public water system is a documented significant contributor to the elevated lead levels.

(d) The school must provide the public with notice and opportunity to comment on the school action plan before it is adopted.

(e) If testing reveals that a significant contributor to lead contamination in school drinking water is the infrastructure operated by a public water system that is not a school water system, the school: (i) Is not financially responsible for remediating elevated lead levels in drinking water that passes through that infrastructure; (ii) must communicate with the public water system regarding its documented significant contribution to lead contamination in school drinking water and request from the public water system a plan for reducing the lead contamination; and (iii) may defer its remediation activities under (b) of this subsection until after the elevated lead level in the public water system's infrastructure is remediated and postremediation retesting does not detect an elevated lead level in the drinking water that passes through that infrastructure.

(f) The school action plan adoption deadlines are as follows:

(i) For lead test results received between July 1, 2014, and the effective date of this section, for which a school did not take remedial action or for which postremediation retesting has not confirmed that the elevated lead level has been reduced to five or fewer parts per billion, the school shall provide notice of elevated lead levels in the communication required under subsection (3) of this section and the school's governing body shall adopt an action plan by March 31, 2022; and

(ii) For lead test results received after the effective date of this section, the school's governing body shall adopt an action plan within six months of receipt.

(g) A school's governing body may adopt an update to an existing school action plan, rather than adopting a new school action plan, in order to address additional lead test results that reveal elevated

lead levels at drinking water outlets, coordinate remediation activities at multiple buildings, or adjust the schedule of remediation activities.

(6) A school must post on a public website the most recent results of testing for lead contamination at drinking water outlets, no later than the time that the proposed school action plan is made publicly available, under subsection (5)(d) of this section.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Department" means the department of health.

(b) "Drinking water" means any water that students have access to where it is reasonably foreseeable that the water may be used for drinking, cooking, or food preparation.

(c) "Drinking water outlet" or "outlet" means any end point for delivery of drinking water, for example a tap, faucet, or fountain.

(d) "Elevated lead level" means a lead concentration in drinking water that exceeds five parts per billion, unless a lower concentration is specified by the state board of health in rule in accordance with section 6 of this act.

(e) "Public water system" has the same meaning as in RCW 70A.120.020.

(f) "School" means a school district and the common schools, as defined in RCW 28A.150.020, within the district; a charter school established under chapter 28A.710 RCW; or the state school for the blind or the state school for the deaf established under RCW 72.40.010.

(g) "Technical guidance" means the technical guidance for reducing lead in drinking water at schools issued by the United States environmental protection agency until the department complies with section 5 of this act when the term means the technical guidance developed by the department.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70 RCW to read as follows:

(1) The department shall conduct sampling and testing for lead contamination at drinking water outlets in school buildings built, or with all plumbing replaced, before 2016 as specified in this section. The department meets the requirements of this section when a school contracts for sampling and testing that meets the requirements of

this section and submits the test results to the department according to a procedure and deadlines determined by the department.

(2) Sampling and testing for the presence and level of lead in drinking water must meet the technical requirements described in the technical guidance.

(3)(a) Initial testing for lead contamination in drinking water must be conducted between July 1, 2014, and June 30, 2026.

(b) Retesting for lead contamination in drinking water must be conducted no less than every five years beginning July 1, 2026.

(4)(a) The department shall develop and publish a two-year plan for sampling and testing. The plan must be updated at least annually. Prior to adding a school to the plan, the department must contact the school to determine whether the school has contracted, or is planning to contract, for sampling and testing.

(b) Beginning July 1, 2026, in developing the two-year plan for sampling and testing, the department must group school buildings by governing body and then prioritize the groups based on the combined length of time since each school building built, or with all plumbing replaced, before 2016 was sampled and tested.

(5) The department shall enter a data-sharing agreement with the office of the superintendent of public instruction for the purpose of compiling a list of school buildings built, or with all plumbing replaced, before 2016.

(6) The definitions in section 2 of this act apply throughout this section unless the context clearly requires otherwise.

NEW SECTION. **Sec. 4.** A new section is added to chapter 43.70 RCW to read as follows:

The department shall allow state-tribal compact schools established under chapter 28A.715 RCW to opt into sampling and testing for lead contamination at drinking water outlets in school buildings built, or with all plumbing replaced, before 2016 pursuant to section 3 of this act.

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.70 RCW to read as follows:

The department shall develop and make available technical guidance for reducing lead contamination in drinking water at schools that is at least as protective of student health as any technical guidance on this topic issued by the United States environmental

protection agency. The technical guidance must include the technical requirements for sampling, processing, and analysis, including that analysis must be conducted by a laboratory accredited by the department of ecology. The technical guidance must describe best practices for remediating elevated lead levels at drinking water outlets in schools. Best practices must include installing and maintaining filters certified by a body accredited by the American national standards institute. Provisions of the technical guidance related to testing for the presence and level of lead in drinking water, as opposed to testing to identify sources of lead for remediation, must be designed to maximize detection of lead in water, and therefore must prohibit sampling or analytical methods that tend to mask lead contamination, including prestagnation flushing and removal of aerators prior to sampling.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.20 RCW to read as follows:

After July 1, 2030, the state board may, by rule, define "elevated lead level" at a concentration of five or fewer parts per billion if scientific evidence supports a lower concentration as having the potential for further reducing the health effects of lead contamination in drinking water.

NEW SECTION. **Sec. 7.** A new section is added to chapter 43.70 RCW to read as follows:

(1) To the fullest extent permitted by federal law, the department, rather than community water systems, is designated as the lead or principal agency in regard to lead in drinking water sampling, testing, notification, remediation, public education, and other actions at public and private elementary and secondary schools as required by the federal lead and copper rule, 40 C.F.R. Part 141.

(2) The department must issue a written waiver that exempts community water systems that serve schools from the sampling and testing requirements of 40 C.F.R. Part 141.92 related to schools if the department determines that the mandatory requirements for sampling and testing for, and remediation of, lead contamination in drinking water outlets at elementary and secondary schools under this act are consistent with the requirements in 40 C.F.R. Part 141.92 of the federal lead and copper rule.

NEW SECTION. **Sec. 8.** This act may be known and cited as the Bruce Speight protect children from being exposed to lead in school drinking water act.

NEW SECTION. **Sec. 9.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2021, in the omnibus appropriations act, this act is null and void.

Passed by the House April 14, 2021.
Passed by the Senate April 11, 2021.
Approved by the Governor May 3, 2021.
Filed in Office of Secretary of State May 3, 2021.

--- END ---

(Effective August 1, 2023)

WAC 246-366A-130

Water quality monitoring—Lead.

(1) School officials shall:

(a) Sample plumbing fixtures that are regularly used for drinking or cooking.

(b) Use a laboratory to analyze all required water samples that is accredited by the department of ecology, or other appropriate agency if outside Washington state, according to EPA drinking water laboratory certification criteria.

(2) Water sampling protocols. School officials shall:

(a) Collect representative samples, according to the percentages required by subsections (3) and (4) of this section, from each type and age of plumbing fixture regularly used for drinking or cooking.

(i) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(ii) For age of fixture, use at least two groupings: Those manufactured prior to 1999, and those manufactured since January 1, 1999.

(b) Sample as follows:

(i) Make sure cold water is the last to run through the fixture to be tested.

(ii) Allow water to sit in the plumbing system at least eight hours. No water may pass through the fixture during that time.

(iii) Place the 250 ml sample bottle under the faucet and open the cold water tap. Fill the bottle to the shoulder or the line marked "250 ml," turn off the water and cap the bottle tightly.

(3) Initial monitoring schedule for lead.

(a) School officials shall conduct initial monitoring by sampling fifty percent of the plumbing fixtures regularly used for drinking or cooking in elementary schools or used by preschool children in K-12 schools within one year after the effective date of this section. This may be either from fifty percent of the fixtures in each school or from all of the fixtures in fifty percent of the schools within a district. School districts shall sample the remaining fifty percent of the fixtures within two years after the effective date of this section.

(b) School officials shall conduct initial monitoring by sampling at least twenty-five percent of each type and age of plumbing fixture, as specified under subsection (2)(a) of this section, regularly used by students for drinking or cooking in:

(i) Middle and junior high schools within three years after the effective date of this section; and

(ii) High schools within four years after the effective date of this section.

(c) School officials, with local health officer approval, may apply samples collected after September 1, 2003, toward meeting the initial monitoring requirement if all plumbing fixtures with lead results above 0.020 milligrams per liter or 20.0 parts per billion have been removed from service, or have been or are being addressed according to subsection (5) of this section, and samples were:

(i) From plumbing fixtures regularly used for drinking or cooking; and

(ii) Collected consistent with subsection (2) of this section.

(4) Ongoing monitoring for lead.

(a) School officials shall repeat lead monitoring every five years, beginning within:

(i) Seven years after the effective date of this section for elementary schools;

(ii) Eight years after the effective date of this section for middle and junior high schools; and

(iii) Nine years after the effective date of this section for high schools.

(b) School officials shall use sampling protocols in subsection (2) of this section to collect samples in all schools from:

(i) No less than twenty-five percent of each type and age of plumbing fixture which is not a "very low lead" plumbing fixture; and

(ii) No less than ten percent of each type of plumbing fixture which is a "very low lead" plumbing fixture.

(c) Schools that are Group A public water systems are not required to do ongoing lead monitoring required by (a) of this subsection if the schools meet the lead monitoring requirements in chapter **246-290** WAC.

(5) Corrective actions. School officials shall:

(a) For all plumbing fixtures with sample results of lead above 0.020 milligrams per liter or 20.0 parts per billion, immediately shut off these fixtures or make them inoperable.

(b) For all plumbing fixtures of the same type and age as any fixture with results above 0.020 milligrams per liter or 20.0 parts per billion:

(i) Take immediate corrective action according to (a) of this subsection; or

(ii) Collect first draw samples within ten business days. Upon receipt of sample results, immediately shut off or make inoperable all plumbing fixtures with results of lead above 0.020 milligrams per liter or 20.0 parts per billion.

(c) To provide drinking water at the location of these fixtures, take one or more of the following remedies:

(i) Bottled water. If bottled water is used, provide bottled water that is produced by a Washington state department of agriculture-approved bottling operation or out-of-state or international bottler whose product meets federal Food and Drug Administration regulations.

(ii) Manual flushing. Manual flushing may be used only as a temporary remedy. If manual flushing is used:

(A) Take flush samples from twenty-five percent of each type and age of the fixtures planned to be included in the flushing program to determine the flushing time necessary to reduce lead to below 0.020 milligrams per liter or 20.0 parts per billion. Start by following the sample collection protocol of first-draw samples described in subsection (2)(b) of this section with the addition of letting the water run for thirty seconds before filling the bottle.

(B) Open the tap of every fixture included in the flushing program every morning before the school facility opens and let the water run for the length of time established in (c)(ii)(A) of this subsection.

(iii) Automated flushing. If automated flushing is used, take samples from twenty-five percent of each type and age of the fixtures included in the flushing program to demonstrate that the automated system reduces lead to below 0.020 milligrams per liter or 20.0 parts per billion.

(iv) Fixture replacement. If individual plumbing fixtures are replaced:

(A) Precondition the new plumbing fixtures by running water through the fixture continuously for twenty-four hours; and

(B) Collect first draw samples after preconditioning and verify sample results of lead below 0.020 milligrams per liter or 20.0 parts per billion. If the preconditioned plumbing fixture does not yield a sample result below this level, (a) of this subsection applies.

(v) Treatment. Before treatment is used, submit an engineering project report to the department, per WAC **246-290-110**. Installation of treatment devices will result in the school's designation as a public water supply. School officials shall then ensure they comply with the Group A public water system rules and regulations, chapter **246-290** WAC and water works operator certification rules and regulations, chapter **246-292** WAC.

(6) Notification requirements. School officials shall:

(a) Notify school facility staff, students, parents, and the local health officer within five business days of the school officials receiving lead sampling results above 0.020 milligrams per liter or 20.0 parts per billion.

(b) Make all results available for review upon request.

[Statutory Authority: RCW **43.20.050**. WSR 10-01-174, 10-12-018, 11-10-080, 13-09-040, 15-09-070, 17-14-055, 19-14-107, 21-14-056, and 22-14-021, § 246-366A-130, filed 12/22/09, 5/21/10, 5/3/11, 4/11/13, 4/15/15, 6/28/17, 7/2/19, 7/1/21, and 6/24/22, effective 8/1/23.]

RCW 43.20.050

Powers and duties of state board of health—Rule making—Delegation of authority—Enforcement of rules.

(1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules for group A public water systems, as defined in RCW 70A.125.010, necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants;

(b) Adopt rules as necessary for group B public water systems, as defined in RCW 70A.125.010. The rules shall, at a minimum, establish requirements regarding the initial design and construction of a public water system. The state board of health rules may waive some or all requirements for group B public water systems with fewer than five connections;

(c) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains;

(d) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, and

cleanliness in public facilities including but not limited to food service establishments, schools, recreational facilities, and transient accommodations;

(e) Adopt rules for the imposition and use of isolation and quarantine;

(f) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as may best be controlled by universal rule; and

(g) Adopt rules for accessing existing databases for the purposes of performing health related research.

(3) The state board shall adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day.

(4) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

(5) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he or she shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

(6) The state board may advise the secretary on health policy issues pertaining to the department of health and the state.

[**2021 c 65 § 37**; **2011 c 27 § 1**; **2009 c 495 § 1**; **2007 c 343 § 11**; **1993 c 492 § 489**; **1992 c 34 § 4**. Prior: **1989 1st ex.s. c 9 § 210**; **1989 c 207 § 1**; **1985 c 213 § 1**; **1979 c 141 § 49**; **1967 ex.s. c 102 § 9**; **1965 c 8 § 43.20.050**; prior: (i) **1901 c 116 § 1**; **1891 c 98 § 2**; RRS § 6001. (ii) **1921 c 7 § 58**; RRS § 10816.]

Washington State Board of Health
Policy & Procedure

Policy Number:	**2005-001**
Subject:	**Responding to Petitions for Rule-Making**
Approved Date:	**November 9, 2005 (revised June 13, 2012)**

Policy Statement

RCW 34.05.330 allows any person to petition a state agency to adopt, repeal, or amend any rule within its authority. Agencies have 60 days to respond. The agency can deny the request—explaining its reasons and, if appropriate, describing alternative steps it is prepared to take—or it must initiative rule-making. If denied, a petitioner can appeal the agency's decision to the Governor.

This policy defines who must be notified and consulted when the Board is petitioned, who may respond on behalf of the Board, and whether Board action is required.

- **Board Response**: When the Board receives a written petition for rule-making within its authority that clearly expresses the change or changes requested, the Board will respond within 60 days. The response may be made at the direction of the Board or under the authority of the Board's Chair. The response will be in the form of a letter from the Chair denying the petition or informing the petitioner the Executive Director has been directed to initiate rule-making.

- **Chair Authority:** The Chair may place a petition for rule-making on the agenda for a Board meeting scheduled to be held within 60 days of receipt of the petition. Alternatively, the Chair may respond to a rule-making petition without formal action by the full Board if the Board does not meet within 60 days of receipt of the petition or the Board chooses not to discuss and take action at a scheduled meeting.

- **Board Action:** A Board member who has been notified of a petition may request that the Chair place the petition on the agenda of a scheduled Board meeting for discussion and possible action by the Board. The Chair will honor the request unless asking the full Board to consider the petition would defer more pressing matters or prevent the Board from responding within 60 days. If the Chair declines, a Board member may introduce a motion to have the full Board consider the petition.

Procedure

- **Notifications:** Board staff, in consultation with the Executive Director, will respond to the petitioner within one business day acknowledging receipt of the petition and informing the petitioner whether the request is clear. The Executive Director or staff will notify Board members that a petition for rule-making has been received. This may be done by mentioning the petition during the next regularly scheduled Board meeting and by including a copy of the petition with materials distributed to Board members in attendance. If no meeting is scheduled before the 60-day response deadline, the Executive Director or staff will send an e-mail to Board members with an electronic version of the petition attached before action is taken by the Chair. The Chair or Executive Director shall also notify Board members of the response.

- **Consultation:** The Executive Director will recommend a response to the Chair. In developing this recommendation, the Executive Director will consult with the Board member who sponsored the most recent revisions to the rule being challenged or the appropriate policy committee. The Executive Director may also consult with appropriate representatives of the implementing agency or agencies, and may consult with stakeholders as appropriate.

WASHINGTON STATE BOARD OF HEALTH

Date: January 9, 2023

To: Washington State Board of Health Members

From: Michelle Davis, Executive Director

Subject: Draft Statement of the Board on 2023-24 Legislative Issues

Background and Summary:

Washington State Board of Health (Board) Policy 2001-001 creates a procedure for monitoring proposed policy and budget issues during legislative session. It also establishes processes for communication between Board members and the Legislature. The policy requires staff to develop for the Board's consideration, a policy statement to guide staff and individual Board members during the legislative session.

At our November meeting, I provided members with a copy of the "Statement of Policy on Possible 2019-2020 Issues" and requested suggestions on this year's statement. Since then, I consulted with staff and drafted the attached statement based on your feedback.

I am asking for your consideration and adoption of 2023-24 Statement of Possible Legislative Issues. If adopted by the Board, this document will guide staff during the 2023 legislative session.

Recommended Board Actions:

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

The Board adopts the Statement of Policy on Possible 2023-24 Legislative Issues as discussed on January 9, 2023.

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.

Washington State Board of Health
Policy & Procedure

Policy Number:	**2001-001**
Subject:	**Monitoring and Communicating With the Legislature About Legislation Relevant to the State Board of Health**
Approved Date:	**January 10, 2001 (Revised June 13, 2012)**

Policy Statement

The Washington State Board of Health monitors and communicates with the Legislature on proposed legislation that:

- Has a direct impact on the Board's statutory powers and duties;
- Runs counter to the Board's intent or direction as stated in existing rule;
- Is directly related to priorities established by the Board each biennium, supported by a Board-approved strategic plan, work plan, interim document, or final report;
- Is directly related to a policy issue addressed in the Board's "Statement on Likely Legislative Issues."
- May adversely impact the public health system.

Procedure

Prior to each legislative session, Board staff, under the direction of the Executive Director, will identify policy issues that are likely to come before the Legislature that have any bearing on the Board's broad statutory authority, its rule making activities, or its priorities. The Executive Director will present a list of these issues to the Board for discussion at a meeting prior to legislative session. The Board may choose to adopt a "Statement on Likely Legislative Issues" that reflects the Board's position on those issues.

During legislative session, Board staff will routinely review legislative bill introductions, committee agendas, and monitor legislative meetings. The Executive Director will provide regular legislative updates to Board members, which may include: upcoming hearings or work sessions, staff activities, bill summaries and recommendations, and budget information.

Action on Bills of Interest

Board staff, in consultation with the Executive Director, shall prepare a summary of concerns, draft messages, and suggested technical solutions for the Chair's approval that Board members or staff may use to communicate the Board's position to a bill's sponsor, appropriate committee chairs, other legislators, and legislative staff.

The Executive Director and the Board Chair or his or her designee must review and approve all correspondence to legislators and legislative staff that conveys the Board's position on legislation or other issues before the Legislature. The correspondence should routinely be copied and sent to the Office of the Secretary – Policy, Legislative, and Constituent Relations.

Responsibility for Communicating with the Legislature
The Board Chair may recommend a specific amendment or other action on proposed legislation to legislators or legislative staff on behalf of the Board, if the Chair believes the position is generally consistent with the wishes of the majority of the Board. The Executive Director or Board staff may transmit or deliver these communications for the Chair.

A Board member may communicate his or her views on Board letterhead and may ask Board staff to help communicate his or her views only if the communication is consistent with Board position and this policy.

This policy is not intended to prevent a Board member from communicating with the Legislature on proposed legislation or other matters of personal interest to the member. However, in these cases, the Board member must clarify that his or her communications do not necessarily reflect the views of the Board and that he or she is acting on his or her own personal behalf.

Agency Request Legislation
Board staff must prepare agency request legislation according to Office of Financial Management (OFM) guidelines and schedules. The Executive Director shall work closely with other state agencies to assure the bill does not conflict with other agency authorities. Consistent with OFM guidelines, all agency request legislation must receive Governor's approval before the Executive Director may seek sponsors or promote the bill to legislators.

Recommendations to the Governor
If the Legislature passes a bill that the Board has testified on or sought amendments to, Board staff, in consultation with the Executive Director and Board Chair, may develop a recommendation to the Governor to sign, partially veto, or veto the legislation. The memo must briefly describe the bill, the Board's position, and recommend Governor's action (sign, partial veto, or veto). Prior to submitting a memo to the Governor's office, staff must complete an enrolled bill analysis for the Governor's executive policy analyst assigned to the legislation.

PDC Reporting
Any Board or staff member who has in-person contact with legislators or legislative staff, including in meetings and at hearings, regarding legislation on behalf of the Board must report the activity to the Executive Director. This report must include the date of the communication, length of time spent with the individual(s), and the topic of discussion, including bill numbers. The Executive Director may need to include these reports in the Board's consolidated quarterly lobbying report as required by the Public Disclosure Commission under RCW 42.17A.635.

Statement of the Board on Possible Legislative Issues
2023-2024 Biennium

It is the policy (Policy 01-001) of the Washington State Board of Health (Board) to comment on legislative proposals that affect the Board's:

- Statutory authority and rules,
- 2022 State Health Report Recommendations, and
- 2017-2022 strategic plan activities

This statement represents the Sense of the Board and is used to guide staff and members in their communications on legislative and budget proposals. The statement is not intended to be an exhaustive list of anticipated legislative proposals, but it is focused on priority issues.

Foundational Public Health Services

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The Board believes that *Public Health is Essential* and supports the recommendations developed by the Foundational Public Health Services (FPHS) Policy Workgroup to modernize the public health system, and provide state funding to the governmental public health system for the delivery of FPHS, so they are available in every community. The governmental public health system must be able to monitor health, focus on prevention, assure health for all, and be capable of all-hazards response. Providing ongoing sustained resources to the governmental health system is critical in order to innovate, modernize, and address inequities.~~The Board supports the governmental public health system's budget requests to:~~

- ~~Increase capacity for monitoring communicable diseases; investigating outbreaks and identifying causes; preventing cases; and coordinating disease response across agencies.~~
- ~~Increase capacity for monitoring the impact and causes of disease and disease response coordination.~~
- ~~Increase statewide capacity for communicable disease monitoring, and outbreak investigations. Expand capacity at the state public health laboratory to meet increased demand.~~
- ~~Continue implementation of the plan to rebuild and modernize public health.~~
- ~~Continue and increase the legislature's initial investment in FPHS~~. This includes increasing the Board's capacity to meet its statutory obligations under chapter 43.20 RCW and other state laws.

The Board believes it is critical for the state to provide adequate, dedicated, stable funding for full implementation of FPHS statewide that keeps pace with inflation and demand for services. The Board supports the Governor's proposed 2023-25 budget, which builds upon the current investment in FPHS by $100 million. The Board **opposes** reductions to funding for the governmental public health system, including changes in fee authority or reductions to funding sources such as the Model Toxics Control Act.

Local ~~Board of Health Governance~~Health Officer Authority

Washington's COVID-19 pandemic response has shown the critical importance of assuring our ~~communities~~ public health partners have evidence-based knowledge and resources to quickly identify and respond to disease outbreaks and other health threats in our communities. Much of the ability to respond to outbreaks and other public health threats falls under the local health officer's authority. The local health officer is appointed by a county's local board of health. ~~Local boards of health are made up of county elected officials, and in some cases, city elected officials and others who are included by way of ordinance. As a result of E2SHB 1152 (passed during the 2021 legislative session) most local boards of health must also have an equal balance of elected and non-elected members starting July 1, 2021. Non-elected members must represent public health, health care facilities, and providers; consumers of public health; and other community stakeholders.~~ Local boards of health, local health administrators, and officers have a statutory duty to carry out the state's public health laws and rules. Public health response should not be partisan or politicized. The Board ~~would~~ **opposes** legislation that diminishes local health officer duties or authorities.

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Health Impact Reviews

Under RCW 43.20.285 the Board conducts Health Impact Reviews (HIRs) at the request of the Governor or a legislator. HIRs are objective, non-partisan, evidence-based analyses of proposed legislative or budgetary changes to determine the potential impacts on health and equity. The Board received funding for an additional 1.0 FTE in the 2021-2022 Foundational Public Health Services budget, which brings the total staffing for this work to 2.6 FTE. The additional capacity will enable the Board to conduct more HIRs, thereby improving the state's ability to use evidence to inform policy and to promote health and equity. While the Board supports other state and legislative efforts to assess equity impacts of legislative proposals, the Board recognizes the unique value that HIRs add to legislative decision-making. The rigorous HIR research approach, which utilizes both quantitative and qualitative research, as well as lived experience, provides legislators with a nuanced understanding of how proposed policy may impact the status quo and health and equity in the state. The Board supports the retention of HIRs and will continue to offer assistance and support to ensure any new proposed tools align with and do not duplicate the work of HIRs.

The Board supports legislative action to ensure long-term, sustainable solutions to obtain peer-reviewed literature access for HIR work. The Board believes that there is also a need for all state ~~employees~~ entities (agencies, boards, commissions, councils, etc.) to have access to research and published literature to inform evidence-based policy and program development.

Preventing Smoking and Vaping

In August 2016, the Board adopted Resolution 2016-01 to increase the age of purchase for tobacco and vapor products from age 18 to 21 years. During the 2019 legislative session, EHB 1074 passed, raising the legal age for purchasing tobacco and vapor products from age 18 to 21 years. While EHB 1074 was an essential public health

intervention to prevent youth access, Washington still needs to reform its commercial tobacco laws, policies, and enforcement practices that negatively affect individuals, namely youth, and instead, shift the responsibility to commercial tobacco businesses or industry actors. The Board supports legislation that improves the effectiveness of Purchase, Use, and Possession (PUP) laws in Washington and reduces inequitable enforcement.

In addition, t~~T~~he Board supports enhancing current strategies to prevent marketing, sales, and use of commercial tobacco products~~,~~ (cigarettes, e-cigarettes, cigars, hookah, heated tobacco, smokeless tobacco, etc.) and cannabis to youth, including a ban on all flavored vapor and tobacco products and adding additional authority for the Secretary of Health to issue product bans and recalls of smoking and vapor products. The Board would support legislation that improves regulation of Washington's vapor product industry, including requiring vapor ingredient disclosure and routine lab testing for vapor products, requiring signage regarding health risks of these products, removing the preemption of vapor product retail licensing, allowing for product bans and recalls, and instituting nicotine limits in products sold in Washington.

In response to an outbreak of e-cigarette and vapor product-associated lung injury, the Board adopted rules to ban the use of vitamin E acetate in vapor products. Compounds, such as Delta-8 THC, and other additives, continue to emerge on the market with little known about their impacts on health. The Board supports efforts to understand and address emerging compounds that result in negative health effects.

Advancing Equity in State Government

The Board recognizes that racism is a public health crisis. Racism and other forms of discrimination have been and continue to be institutionalized and perpetuated through policies and practices that prevent meaningful community engagement and limit opportunity and access to important public services. The Board would support legislation that is anti-racist and prioritizes and operationalizes equity across state government.

As part of its five-year strategic plan, the Board commits to supporting the Governor's Interagency Council on Health Disparities (Council) and to incorporating the Council's recommendations in the Board's State Health Report.

~~In 2019, the Board supported legislation that would lead to creation of a State Equity Office.~~ Through a proviso in the 2019-2021 operating budget, the Legislature directed the ~~Health Disparities~~ Council to convene an Office of Equity Task Force to develop an operations plan for a future Washington State Office of Equity. ~~The~~ In 2020, the Board endorsed the Task Force's recommendations as well as legislation that created the Washington State Office of Equity. The Board ~~and~~ supports ~~ongoing funding for the Washington State Office of Equity~~legislative proposals that align with the Task Force's recommendations, including proposals that assure ongoing and adequate funding for the Office of Equity.

Data Disaggregation

~~The COVID-19 pandemic has disproportionately impacted communities of color. These disparate impacts are not unique to this pandemic. Existing inequities in our public health and health care systems impact public health's ability to identify and reach disproportionately impacted populations. When experience reveals inequities across and within groups, it is critical to be able to access and use disaggregated data to enhance efforts in preventing and containing diseases and conditions, in order to maximize public health.~~

Disaggregated data that reveal inequities across and within groups are instrumental for public health efforts related to preventing and controlling diseases and conditions. However, the collection of demographic data in Washington is currently decentralized and inconsistent, often working within the parameters of outdated federal data standards. Collecting data in greater detail is an essential part of identifying and eliminating health inequities, undoing institutional racism, and advancing equity within public health and the broader governmental system.

The c~~C~~ollection and analysis of disaggregated data helps the governmental public health system identify and address health inequities and prioritize resources ~~to~~for communities. COVID-19 shed light on the systemic and structural inequities in the health-care and public health systems. Collection and use of disaggregated data was, and continues to be, vital to identifying impacted populations. Together disaggregated data and qualitative data—stories from disproportionately impacted communities—support effective public health responses, including partnering with communities on outreach, prevention, and access to care. Without these data, the public health system cannot effectively and equitably respond to a public health crisis. ~~Collection of detailed race, ethnicity, and language (REAL) data, beyond the Census-level data helps the public health system understand in greater detail which communities are disproportionately impacted and enables public health to build partnerships with community-based organizations to develop community-led prevention strategies that are culturally and linguistically appropriate. Meaningful use of these data relies on the interoperability of public health and health care data systems. Up-to-date information systems and technology must be in place and functional to facilitate collection and transmittal of these key demographic data.~~

The Board would support legislative action to ensure the collection of disaggregated race, ethnicity, and language~~REAL~~ data, beyond Census-level categories, as well as data to identify and eliminate health inequities (e.g., housing status, country of origin, tribal affiliation, and Indigenous background, ~~v~~Veteran status, sexual orientation, gender, occupation, income, and disability status~~for example by disability status, sexual orientation, gender identity, and other demographics~~). Variables such as these can provide insight into the social and political determinants of health and equity. The Board would also support legislation to improve the interoperability of public

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health and health care data systems to ensure functionality to facilitate the collection and meaningful use of these data.

School Environmental Health and Safety

The Board believes that all children should be able to attend schools that are built, maintained, and operated to assure a safe and healthy environment. The Board supports removal of the budget proviso that suspends the Board's rules related to environmental health and safety standards for primary and secondary schools (Chapter 246-366A WAC). Until the Board's suspended school rules can be implemented, the Board supports the Department of Health's November 2016 recommendations in response to the Governor's directive on lead as they relate to school environmental health and safety.

~~During the COVID-19 pandemic, the~~The Board has long recognized that ongoing, regular inspections and technical assistance provided by local health jurisdictions are critical to ensuring schools are designed, built, and maintained to protect students' health. Only ~~twelve~~ eighteen of Washington's thirty-five local health jurisdictions have school environmental health and safety programs. Providing basic health and safety protections for all school children across the state, local health jurisdictions must have sufficient resources and capacity to conduct school environmental health and safety inspections.

Indoor air quality is a key component of a healthy school environment. Higher ventilation rates can improve absenteeism and student performance, as well as ~~and~~ reduce ~~the~~ transmission and spread of respiratory illness, including SARS-CoV-2 (the virus that causes COVID-19). Indoor air quality can also be adversely impact by increased wildfire and extreme weather events. Regular inspection, maintenance, and regular repairs of heating, ventilation, and air conditioning (HVAC) systems, as well as adequate ventilation to dilute contaminants, can improve indoor air quality and school safety.

The Board would support legislation to adequately fund school environmental health and safety programs as well as legislation to assess, improve, and update ventilation systems and other strategies to improve indoor air quality in school facilities.

Governor's Directive on Lead

Governor Inslee issued Directive 16-06 on May 2, 2016, to address lead remediation in the built environment. Environmental pathways for lead exposure include drinking water, homes, schools, and outdoor areas.

The Board continues to support the Department of Health's November 2016 report recommendations to the Governor, including continuing the initial investment made to test drinking water at schools, provide remediation funds to replace fixtures, improve remediation assistance for low-income and rental properties, and targeted blood testing

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for children at greatest risk of exposure to lead and subsequent case management. The Board was pleased with the passage of E2SHB 1139 during the 2021 legislative session, which requires lead testing and remediation in school drinking water. The Board also supports:

- Updating the *Health and Safety Guide for K–12 Schools in Washington State.*
- Gathering data to evaluate and update chapter 246-366A WAC, Environmental Health and Safety Standards for Primary and Secondary Schools, including updates to align with E2SHB 1139 and recent revisions made to the federal lead and copper rules.
- Including environmental health and safety in decisions using the funding formula for school construction and modernization.
- Encouraging healthcare providers to follow DOH blood lead screening recommendations.

Opioids

The Board supports the goals, strategies, and actions outlined in the updated 2021-2022 Opioid and Overdose Response Plan and the forthcoming updated plan, to effectively combat the opioid epidemic. Its goals are to:

- Prevent opioid and other drug misuse.
- Identify and treat opioid misuse and stimulant use disorder.
- Ensure and improve the health and wellness of people who use opioids and other drugs
- Use data and information to detect opioid misuse, monitor health effects for persons who use drugs, analyze population health, and evaluate interventions.
- Support individuals in recovery.

On-Site Sewage Systems

The Board recognizes that on-site sewage systems are an important and effective means of treating and dispersing effluent if the systems are properly permitted, sited, operated, and maintained. The Board supports legislation that preserves the authority of local health officers and boards of health to develop and implement on-site sewage system regulations and plans which protect public health and meet community needs. The Board supports efforts to assure local on-site site sewage management programs have adequate funding.

Food Safety

The Board recognizes that food service is evolving. The COVID-19 pandemic has, and continues to have, major impacts on food service and has prompted creative ideas to improve food access and equitable entry into the restaurant industry. ~~During the global pandemic, takeout and food distribution helped increase food rescue and security while reducing food waste.~~ This session, the Board anticipates legislation on topics including microenterprise or commercial ~~home~~ kitchens, community pantries and/or refrigerators, foods offered in bed and breakfast settings, and regulations of non-permanent

structuresuse of latex gloves in food preparation, and statewide mobile food permits this legislative session. The Board's support of food service-relatedsuch legislation depends on whether the legislation proposal includes critical public health safeguards that uphold essential food safety standards (including but not limited to permitting, inspections, plan review, time to temperature controls, and other public health measures). The Board would oppose legislation that would exempt currently unregulated practices such as microenterprise -home kitchens from fundamental environmental health and safety requirements for food service facilities.

Aquatic and Water Recreation Facilities

The Board recognizes that drowning is the leading cause of death for children ages 1-4 and a significant source of morbidity in children under age 19. State and local regulations on aquatic facilities, water recreation facilities, and designated swim areas are necessary and important to protect the health, safety, and welfare of those who use them. The Board supports legislation that aims to prevent injury, illness, and death at facilities such as swimming pools, hot tubs, splash pads, water parks, natural designated swim areas, and more.

Maternal and Child Health and Wellness of Pregnant PeoplePeople who are pregnant or postpartum and their Children

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The Board supports enhancing systems and support for pregnant motherspeople who are pregnant or postpartum, infants, and children, and the monitoring of maternal mortalitymortality due to pregnancy-related conditions. The Board supports the recommendations in the Council's Literature Review on Inequities in Reproductive Health Access, as required by SSB 6219 (2018).

-Additionally, the Board supports the Council's position (adopted September 2022) to use a Reproductive Justice framework when considering and addressing inequities in health and access and when making recommendations to reduce and eliminate inequities, and recognizes that a legal right to abortion and other reproductive health care services is critical. A Reproductive Justice framework expands beyond personal choice, focusing on access to services and emphasizing the human right to maintain personal bodily autonomy, have children, not have children, and raise the children we have in safe and sustainable communities. The Board shares the Council's commitment to understanding how racialized power systems limit access to health and opportunity, and we commits to centering racial justice in our work and consideration of proposed legislation.

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The Board also supports the recommendations in the Department of Health's Healthy Pregnancy Advisory Committee Report on Strategies for Improving Maternal and Infant Health Outcomes.

Oral Health

The Board supports legislation that will advance its 2015 oral health recommendations, including maintaining and building upon effective programs like Access to Baby and

Child Dentistry and University of Washington's Regional Initiatives in Dental Education (RIDE). The Board would also support the development of a state oral health officer at the Department of Health.

Immunizations

The Board recognizes the research and data that demonstrate that immunizations reduce the incidence of vaccine-preventable disease in our community and protect those who are immunocompromised and those unable to be vaccinated. The Board supports legislation that helps reduce~~s~~ the number of children who are out of compliance with state immunization documentation requirements, assists schools and childcares in monitoring the immunization status of ~~school-aged~~ children, and increases immunization rates across all age groups. The Board supports additional funding to increase school nurse capacity and improve access to and use of the Washington State Immunization Information System. The Board also supports the Department of Health's efforts to promote vaccination against COVID-19 by making these vaccines accessible.

Obesity Prevention and Access to Healthy Food

The rate of increase in obesity among Washington residents has slowed compared to other states. The Board supports efforts to create equitable access to safe, well-lit public spaces that promote movement, including parks and playgrounds. The Board supports efforts to increase access to healthy foods including fresh fruits and vegetables, maintaining and expanding access to programs such as WIC, WIC/SNAP at farmers markets, USDA's school lunch program, and efforts to increase access to culturally relevant foods, reduce food insecurity, and increase opportunities for physical activity.

The Board also supports maintaining funding for the Fruit and Vegetable Incentive Program, which provides incentives to people with low incomes experiencing food insecurity to support healthy food options.

Increase Access to Health Insurance Coverage

A number of efforts have increased access to affordable health insurance for people in Washington, including federal initiatives like the~~The~~ Affordable Care Act ~~increased access to affordable health care for people in Washington~~, Medicaid expansion, and American Rescue Plan Act, and state initiatives like Cascade Care. ~~The uninsured rate in our state dropped by 61 percent between 2013 and 2016, to 5.4 percent of Washingtonians uninsured, but 2018 saw the number of uninsured Washingtonians increase to 6.2 percent. Access to care has helped significantly reduce the number of adults who delay seeking care. Timely access to care helps people live longer, healthier, and more productive lives. It helps reduce and control health care costs.~~Access to health insurance increases access to and use of healthcare services and improves health outcomes. ~~During the 2019 legislative session, the legislature passed legislation to make public option plans available in every county.~~ In 2021, ~~The~~ the legislature passed supplemental legislation to further increase the affordability and availability of ~~these~~ Cascade Care~~plans~~. This included a new premium and cost-sharing

subsidy program administered by the state. Coupled with expanded federal subsidies, some people will be able to enroll in a plan with premiums under $10/month for the 2023 plan year. The legislature also took action to explore options for extending health insurance access regardless of immigration status. With the end of the federal COVID-19 Public Health Emergency, approximately 13% of Medicaid enrollees (300,000 people) in Washington -may lose healthcare coverage, making access to affordable health insurance critical. The Board supports legislation that continues to build and sustain access to affordable health coverage across the state for all Washingtonians and legislation that alleviates cost concerns of those who are underinsured.

Shellfish Sanitation

The Board recognizes that sanitary controls are essential for the safe production, harvest, processing, and marketing of shellfish. Historically, the Board's rulemaking authority and the Department of Health's regulatory authority have focused on the commercial and recreational harvest of bivalve molluscan shellfish such as clams, oysters, mussels, and geoduck. The Board and its partners have observed shifting needs related to climate change, marine biotoxins, and other shellfish, such as crab. In 2021 and 2022, SHB 1508 nearly passed. This bill would amend chapter 69.30 RCW, Sanitary Control of Shellfish, authorizing Board rulemaking to establish sanitary controls for commercial crab harvesting and processing as it pertains to marine biotoxins such as domoic acid and paralytic shellfish poisoning. This bill will likely be reintroduced in the 2023 session and the Board supports its passage.

Mental Health Services

The Board recognizes the disparate access to consistent and culturally appropriate mental health services in the state, particularly for communities that have been disproportionately impacted by the COVID-19 pandemic. In recent years, there have been efforts to increase access to video and audio platforms that provide mental health services. The Board would support continued efforts to increase access to these services across our communities.

The Board also recognizes the workforce challenges that plague the mental healthcare system. New provider types such as certified peer counselors have expanded capacity for support services, but gaps still exist. Additionally, studies continually show that there are public health benefits to providers reflecting the racial/ethnic diversity of their patients, by increasing trust, participation in care, and an increase in patient comfort. The Board supports efforts to increase and diversify the mental health workforce in Washington. ~~Lastly, the Board recognizes the~~ The COVID-19 pandemic has had a profound impact ~~that the COVID-19 pandemic has had~~ on youth and families and exacerbated the need for access to age-appropriate services, especially in schools. During the 2022 session, the legislature approved an increase in the prototypical funding formula (2SHB 1664) to support more school counselors, social workers, and psychologists as part of basic education in Washington. The Board supports efforts to

make mental health services readily available to youth in Washington and increase social and emotional supports in schools.

Drinking Water

The Board recognizes that safe, reliable drinking water systems and drinking water supplies are essential for public health protection and community well-being. The Board's Group A rules cover the state's largest public water systems, and its Group B rules apply to public systems that generally serve fewer than fifteen connections. The Board supports budget and policy proposals that strengthen implementation of these rules, drinking water infrastructure, and source water protection. In the 2023 Legislative ~~s~~Session, the Board anticipates and supports policy and funding proposals to:

- Develop programs to support public water system compliance and assist counties and others with failing water systems that fall into receivership and threaten community access to safe drinking water;
- Find alternate drinking water sources and solutions for communities on wells and small water systems with contaminated drinking water sources; and
- Secure adequate state funding to match federal funding in the Bipartisan Infrastructure Law to support implementation of Board rules and Safe Drinking Water Act compliance.

Healthy Environment for All (HEAL) Act

The Board agrees with the Environmental Justice Task Force's statement that "Washington cannot achieve equity without [environmental justice]" and that "t]he pathway to reaching an equitable Washington is only possible through ongoing anti-racism, environmental conservation, public health, and community engagement work." In 2021, the Legislature passed the Healthy Environment for All (HEAL) Act. The HEAL Act created the Environmental Justice Council and created obligations for seven state agencies to integrate environmental justice into agency decision-making, policy, and practice, as well as specific provisions to update and maintain the Washington Tracking Network's Environmental Health Disparities Map. Other agencies may opt-in to the obligations. Three agencies, including the Board, have opted to join in a "Listen and Learn" capacity and are participating in meetings of the Environmental Justice Council and implementing HEAL Act requirements as resources allow. The Board supports ongoing and increased funding to support implementation of the HEAL Act and additional environmental justice efforts across state agencies.

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Statement of the Board on Possible Legislative Issues
2023-2024 Biennium

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Foundational Public Health Services

The Board believes that *Public Health is Essential* and supports the recommendations developed by the Foundational Public Health Services (FPHS) Policy Workgroup to modernize the public health system, and provide state funding to the governmental public health system for the delivery of FPHS, so they are available in every community. The governmental public health system must be able to monitor health, focus on prevention, assure health for all, and be capable of all-hazards response. Providing ongoing sustained resources to the governmental health system is critical in order to innovate, modernize, and address inequities. This includes increasing the Board's capacity to meet its statutory obligations under chapter 43.20 RCW and other state laws.

The Board believes it is critical for the state to provide adequate, dedicated, stable funding for full implementation of FPHS statewide that keeps pace with inflation and demand for services. The Board supports the Governor's proposed 2023-25 budget, which builds upon the current investment in FPHS by $100 million. The Board **opposes** reductions to funding for the governmental public health system, including changes in fee authority or reductions to funding sources such as the Model Toxics Control Act.

Local Health Officer Authority

Washington's COVID-19 pandemic response has shown the critical importance of assuring our public health partners have evidence-based knowledge and resources to quickly identify and respond to disease outbreaks and other health threats in our communities. Much of the ability to respond to outbreaks and other public health threats falls under the local health officer's authority. The local health officer is appointed by a county's local board of health. Local boards of health, local health administrators, and officers have a statutory duty to carry out the state's public health laws and rules. Public health response should not be partisan or politicized. The Board **opposes** legislation that diminishes local health officer duties or authorities.

Health Impact Reviews

Under RCW 43.20.285 the Board conducts Health Impact Reviews (HIRs) at the request of the Governor or a legislator. HIRs are objective, non-partisan, evidence-based analyses of proposed legislative or budgetary changes to determine the potential impacts on health and equity. The Board received funding for an additional 1.0 FTE in the 2021-2022 Foundational Public Health Services budget, which brings the total staffing for this work to 2.6 FTE. The additional capacity will enable the Board to conduct more HIRs, thereby improving the state's ability to use evidence to inform policy and to promote health and equity. While the Board supports other state and legislative efforts to assess equity impacts of legislative proposals, the Board recognizes the unique value that HIRs add to legislative decision-making. The rigorous HIR research approach, which utilizes both quantitative and qualitative research, as well as lived experience, provides legislators with a nuanced understanding of how proposed policy may impact the status quo and health and equity in the state. The Board supports the retention of HIRs and will continue to offer assistance and support to ensure any new proposed tools align with and do not duplicate the work of HIRs.

The Board supports legislative action to ensure long-term, sustainable solutions to obtain peer-reviewed literature access for HIR work. The Board believes that there is also a need for all state entities (agencies, boards, commissions, councils, etc.) to have access to research and published literature to inform evidence-based policy and program development.

Preventing Smoking and Vaping

In August 2016, the Board adopted Resolution 2016-01 to increase the age of purchase for tobacco and vapor products from age 18 to 21 years. During the 2019 legislative session, EHB 1074 passed, raising the legal age for purchasing tobacco and vapor products from age 18 to 21 years. While EHB 1074 was an essential public health intervention to prevent youth access, Washington still needs to reform its commercial tobacco laws, policies, and enforcement practices that negatively affect individuals, namely youth, and instead, shift the responsibility to commercial tobacco businesses or industry actors. The Board supports legislation that improves the effectiveness of Purchase, Use, and Possession (PUP) laws in Washington and reduces inequitable enforcement.

In addition, the Board supports enhancing current strategies to prevent marketing, sales, and use of commercial tobacco products (cigarettes, e-cigarettes, cigars, hookah, heated tobacco, smokeless tobacco, etc.) and cannabis to youth, including a ban on all flavored vapor and tobacco products and adding additional authority for the Secretary of Health to issue product bans and recalls of smoking and vapor products. The Board would support legislation that improves regulation of Washington's vapor product industry, including requiring vapor ingredient disclosure and routine lab testing for vapor products, requiring signage regarding health risks of these products, removing the preemption of vapor product retail licensing, allowing for product bans and recalls, and instituting nicotine limits in products sold in Washington.

In response to an outbreak of e-cigarette and vapor product-associated lung injury, the Board adopted rules to ban the use of vitamin E acetate in vapor products. Compounds, such as Delta-8 THC, and other additives, continue to emerge on the market with little known about their impacts on health. The Board supports efforts to understand and address emerging compounds that result in negative health effects.

Advancing Equity in State Government

The Board recognizes that racism is a public health crisis. Racism and other forms of discrimination have been and continue to be institutionalized and perpetuated through policies and practices that prevent meaningful community engagement and limit opportunity and access to important public services. The Board would support legislation that is anti-racist and prioritizes and operationalizes equity across state government.

As part of its five-year strategic plan, the Board commits to supporting the Governor's Interagency Council on Health Disparities (Council) and to incorporating the Council's recommendations in the Board's State Health Report.

Through a proviso in the 2019-2021 operating budget, the Legislature directed the Council to convene an Office of Equity Task Force to develop an operations plan for a future Washington State Office of Equity. In 2020, the Board endorsed the Task Force's recommendations as well as legislation that created the Washington State Office of Equity. The Board supports legislative proposals that align with the Task Force's recommendations, including proposals that assure ongoing and adequate funding for the Office of Equity.

Data Disaggregation

Disaggregated data that reveal inequities across and within groups are instrumental for public health efforts related to preventing and controlling diseases and conditions. However, the collection of demographic data in Washington is currently decentralized and inconsistent, often working within the parameters of outdated federal data standards. Collecting data in greater detail is an essential part of identifying and eliminating health inequities, undoing institutional racism, and advancing equity within public health and the broader governmental system.

The collection and analysis of disaggregated data helps the governmental public health system identify and address health inequities and prioritize resources for communities. COVID-19 shed light on the systemic and structural inequities in the healthcare and public health systems. Collection and use of disaggregated data was, and continues to be, vital to identifying impacted populations. Together disaggregated data and qualitative data—stories from disproportionately impacted communities—support effective public health responses, including partnering with communities on outreach, prevention, and access to care. Without these data, the public health system cannot effectively and equitably respond to a public health crisis.

The Board would support legislative action to ensure the collection of disaggregated race, ethnicity, and language data, beyond Census-level categories, as well as data to identify and eliminate health inequities (e.g., housing status, country of origin, tribal affiliation, and Indigenous background, Veteran status, sexual orientation, gender, occupation, income, and disability status). Variables such as these can provide insight into the social and political determinants of health and equity. The Board would also support legislation to improve the interoperability of public health and health care data systems to ensure functionality to facilitate the collection and meaningful use of these data.

School Environmental Health and Safety

The Board believes that all children should be able to attend schools that are built, maintained, and operated to assure a safe and healthy environment. The Board supports removal of the budget proviso that suspends the Board's rules related to environmental health and safety standards for primary and secondary schools (Chapter 246-366A WAC). Until the Board's suspended school rules can be implemented, the Board supports the Department of Health's November 2016 recommendations in response to the Governor's directive on lead as they relate to school environmental health and safety.

The Board has long recognized that ongoing, regular inspections and technical assistance provided by local health jurisdictions are critical to ensuring schools are designed, built, and maintained to protect students' health. Only eighteen of Washington's thirty-five local health jurisdictions have school environmental health and safety programs. Providing basic health and safety protections for all school children across the state, local health jurisdictions must have sufficient resources and capacity to conduct school environmental health and safety inspections.

Indoor air quality is a key component of a healthy school environment. Higher ventilation rates can improve absenteeism and student performance, as well as reduce transmission and spread of respiratory illness, including SARS-CoV-2 (the virus that causes COVID-19). Indoor air quality can also be adversely impact by increased wildfire and extreme weather events. Regular inspection, maintenance, and regular repairs of heating, ventilation, and air conditioning (HVAC) systems, as well as adequate ventilation to dilute contaminants, can improve indoor air quality and school safety.

The Board would support legislation to adequately fund school environmental health and safety programs as well as legislation to assess, improve, and update ventilation systems and other strategies to improve indoor air quality in school facilities.

Governor's Directive on Lead

Governor Inslee issued Directive 16-06 on May 2, 2016, to address lead remediation in the built environment. Environmental pathways for lead exposure include drinking water, homes, schools, and outdoor areas.

The Board continues to support the Department of Health's November 2016 report recommendations to the Governor, including continuing the initial investment made to test drinking water at schools, provide remediation funds to replace fixtures, improve remediation assistance for low-income and rental properties, and targeted blood testing for children at greatest risk of exposure to lead and subsequent case management. The Board was pleased with the passage of E2SHB 1139 during the 2021 legislative session, which requires lead testing and remediation in school drinking water. The Board also supports:

- Updating the *Health and Safety Guide for K–12 Schools in Washington State.*
- Gathering data to evaluate and update chapter 246-366A WAC, Environmental Health and Safety Standards for Primary and Secondary Schools, including updates to align with E2SHB 1139 and recent revisions made to the federal lead and copper rules.
- Including environmental health and safety in decisions using the funding formula for school construction and modernization.
- Encouraging healthcare providers to follow DOH blood lead screening recommendations.

Opioids

The Board supports the goals, strategies, and actions outlined in the updated 2021-2022 Opioid and Overdose Response Plan and the forthcoming updated plan, to effectively combat the opioid epidemic. Its goals are to:

- Prevent opioid and other drug misuse.
- Identify and treat opioid misuse and stimulant use disorder.
- Ensure and improve the health and wellness of people who use opioids and other drugs
- Use data and information to detect opioid misuse, monitor health effects for persons who use drugs, analyze population health, and evaluate interventions.
- Support individuals in recovery.

On-Site Sewage Systems

The Board recognizes that on-site sewage systems are an important and effective means of treating and dispersing effluent if the systems are properly permitted, sited, operated, and maintained. The Board supports legislation that preserves the authority of local health officers and boards of health to develop and implement on-site sewage system regulations and plans which protect public health and meet community needs. The Board supports efforts to assure local on-site site sewage management programs have adequate funding.

Food Safety

The Board recognizes that food service is evolving. The COVID-19 pandemic has, and continues to have, major impacts on food service and has prompted creative ideas to

improve food access and equitable entry into the restaurant industry. This session, the Board anticipates legislation on topics including microenterprise or commercial kitchens, community pantries and/or refrigerators, foods offered in bed and breakfast settings, and regulations of non-permanent structures. The Board's support of food service-related legislation depends on whether the proposal includes critical public health safeguards that uphold essential food safety standards (including but not limited to permitting, inspections, plan review, time to temperature controls, and other public health measures). The Board would oppose legislation that would exempt currently unregulated practices such as microenterprise home kitchens from fundamental environmental health and safety requirements for food service facilities.

Aquatic and Water Recreation Facilities

The Board recognizes that drowning is the leading cause of death for children ages 1-4 and a significant source of morbidity in children under age 19. State and local regulations on aquatic facilities, water recreation facilities, and designated swim areas are necessary and important to protect the health, safety, and welfare of those who use them. The Board supports legislation that aims to prevent injury, illness, and death at facilities such as swimming pools, hot tubs, splash pads, water parks, natural designated swim areas, and more.

Health and Wellness of People who are pregnant or postpartum and their Children

The Board supports enhancing systems and support for people who are pregnant or postpartum, infants, and children, and the monitoring of mortality due to pregnancy-related conditions. The Board supports the recommendations in the Council's Literature Review on Inequities in Reproductive Health Access, as required by SSB 6219 (2018).

Additionally, the Board supports the Council's position (adopted September 2022) to use a Reproductive Justice framework when considering and addressing inequities in health and access and recognizes that a legal right to abortion and other reproductive health care services is critical. A Reproductive Justice framework expands beyond personal choice, focusing on access to services and emphasizing the human right to maintain personal bodily autonomy, have children, not have children, and raise the children we have in safe and sustainable communities. The Board shares the Council's commitment to understanding how racialized power systems limit access to health and opportunity and commits to centering racial justice in our work and consideration of proposed legislation.

The Board also supports the recommendations in the Department of Health's Healthy Pregnancy Advisory Committee Report on Strategies for Improving Maternal and Infant Health Outcomes.

Oral Health

The Board supports legislation that will advance its 2015 oral health recommendations, including maintaining and building upon effective programs like Access to Baby and Child Dentistry and University of Washington's Regional Initiatives in Dental Education

(RIDE). The Board would also support the development of a state oral health officer at the Department of Health.

Immunizations

The Board recognizes the research and data that demonstrate that immunizations reduce the incidence of vaccine-preventable disease in our community and protect those who are immunocompromised and those unable to be vaccinated. The Board supports legislation that helps reduce the number of children who are out of compliance with state immunization documentation requirements, assists schools and childcares in monitoring the immunization status of children, and increases immunization rates across all age groups. The Board supports additional funding to increase school nurse capacity and improve access to and use of the Washington State Immunization Information System. The Board also supports the Department of Health's efforts to promote vaccination against COVID-19 by making these vaccines accessible.

Obesity Prevention and Access to Healthy Food

The rate of increase in obesity among Washington residents has slowed compared to other states. The Board supports efforts to create equitable access to safe, well-lit public spaces that promote movement, including parks and playgrounds. The Board supports efforts to increase access to healthy foods including fresh fruits and vegetables, maintaining and expanding access to programs such as WIC, WIC/SNAP at farmers markets, USDA's school lunch program, and efforts to increase access to culturally relevant foods, reduce food insecurity, and increase opportunities for physical activity.

The Board also supports maintaining funding for the Fruit and Vegetable Incentive Program, which provides incentives to people with low incomes experiencing food insecurity to support healthy food options.

Increase Access to Health Insurance Coverage

A number of efforts have increased access to affordable health insurance for people in Washington, including federal initiatives like the Affordable Care Act, Medicaid expansion, and American Rescue Plan Act, and state initiatives like Cascade Care. Access to health insurance increases access to and use of healthcare services and improves health outcomes. In 2021, the legislature passed supplemental legislation to further increase the affordability and availability of Cascade Care. This included a new premium and cost-sharing subsidy program administered by the state. Coupled with expanded federal subsidies, some people will be able to enroll in a plan with premiums under $10/month for the 2023 plan year. The legislature also took action to explore options for extending health insurance access regardless of immigration status. With the end of the federal COVID-19 Public Health Emergency, approximately 13% of Medicaid enrollees (300,000 people) in Washington may lose healthcare coverage, making access to affordable health insurance critical. The Board supports legislation that continues to build and sustain access to affordable health coverage across the state for

all Washingtonians and legislation that alleviates cost concerns of those who are underinsured.

Shellfish Sanitation

The Board recognizes that sanitary controls are essential for the safe production, harvest, processing, and marketing of shellfish. Historically, the Board's rulemaking authority and the Department of Health's regulatory authority have focused on the commercial and recreational harvest of bivalve molluscan shellfish such as clams, oysters, mussels, and geoduck. The Board and its partners have observed shifting needs related to climate change, marine biotoxins, and other shellfish, such as crab. In 2021 and 2022, SHB 1508 nearly passed. This bill would amend chapter 69.30 RCW, Sanitary Control of Shellfish, authorizing Board rulemaking to establish sanitary controls for commercial crab harvesting and processing as it pertains to marine biotoxins such as domoic acid and paralytic shellfish poisoning. This bill will likely be reintroduced in the 2023 session and the Board supports its passage.

Mental Health Services

The Board recognizes the disparate access to consistent and culturally appropriate mental health services in the state, particularly for communities that have been disproportionately impacted by the COVID-19 pandemic. In recent years, there have been efforts to increase access to video and audio platforms that provide mental health services. The Board would support continued efforts to increase access to these services across our communities.

The Board also recognizes the workforce challenges that plague the mental healthcare system. New provider types such as certified peer counselors have expanded capacity for support services, but gaps still exist. Additionally, studies continually show that there are public health benefits to providers reflecting the racial/ethnic diversity of their patients, by increasing trust, participation in care, and an increase in patient comfort. The Board supports efforts to increase and diversify the mental health workforce in Washington. The COVID-19 pandemic has had a profound impact on youth and families and exacerbated the need for access to age-appropriate services, especially in schools. During the 2022 session, the legislature approved an increase in the prototypical funding formula (2SHB 1664) to support more school counselors, social workers, and psychologists as part of basic education in Washington. The Board supports efforts to make mental health services readily available to youth in Washington and increase social and emotional supports in schools.

Drinking Water

The Board recognizes that safe, reliable drinking water systems and drinking water supplies are essential for public health protection and community well-being. The Board's Group A rules cover the state's largest public water systems, and its Group B rules apply to public systems that generally serve fewer than fifteen connections. The

Board supports budget and policy proposals that strengthen implementation of these rules, drinking water infrastructure, and source water protection. In the 2023 Legislative Session, the Board anticipates and supports policy and funding proposals to:

- Develop programs to support public water system compliance and assist counties and others with failing water systems that fall into receivership and threaten community access to safe drinking water;
- Find alternate drinking water sources and solutions for communities on wells and small water systems with contaminated drinking water sources; and
- Secure adequate state funding to match federal funding in the Bipartisan Infrastructure Law to support implementation of Board rules and Safe Drinking Water Act compliance.

Healthy Environment for All (HEAL) Act

The Board agrees with the Environmental Justice Task Force's statement that "Washington cannot achieve equity without [environmental justice]" and that "t]he pathway to reaching an equitable Washington is only possible through ongoing anti-racism, environmental conservation, public health, and community engagement work." In 2021, the Legislature passed the Healthy Environment for All (HEAL) Act. The HEAL Act created the Environmental Justice Council and created obligations for seven state agencies to integrate environmental justice into agency decision-making, policy, and practice, as well as specific provisions to update and maintain the Washington Tracking Network's Environmental Health Disparities Map. Other agencies may opt-in to the obligations. Three agencies, including the Board, have opted to join in a "Listen and Learn" capacity and are participating in meetings of the Environmental Justice Council and implementing HEAL Act requirements as resources allow. The Board supports ongoing and increased funding to support implementation of the HEAL Act and additional environmental justice efforts across state agencies.

WASHINGTON STATE BOARD OF HEALTH

Date: January 9, 2022

To: Washington State Board of Health Members

From: Patty Hayes, Board Member

Subject: Exception Rulemaking to Correct Typographical Errors in WAC 246-500-055, Human Remains Through Natural Organic Reduction

Background and Summary:

The Washington State Board of Health (Board) has the authority under RCW 43.20.050(2)(f) to adopt rules and standards for the prevention and control of infectious and noninfectious diseases, including rules governing the receipt and conveyance of remains of deceased persons. Chapter 246-500 WAC is the rule that establishes standards for health and safety measures in the handling of human remains.

In 2019, the Washington State Legislature passed ESSB 5001 (Chapter 432, Laws 2019), which authorized natural organic reduction (NOR) as a disposition method for human remains. Washington was the first state in the country, and first place in the world, to authorize NOR. In 2020, the Board updated chapter 246-500 WAC to include NOR as an approved method and added a new subsection, WAC-246-500-055, to establish the requirements that NOR facility operators must meet for testing and analyzing samples to prevent and control any potential health hazards. The Washington State Department of Licensing (DOL) is the regulator of NOR facilities and holds the overall licensing authority.

WAC 246-500-055 went into effect in January 2021. To date, four facilities have been licensed to conduct NOR in Washington. Following the first year of rule implementation, Board staff conducted an informal survey of all NOR facility operators to determine whether rule implementation was successful and if additional guidance was needed. Based on findings from the post-implementation survey and questions sent from the DOL and NOR facilities, staff identified a need for additional rulemaking to clarify the language in WAC-246-500-055. The purpose of this rulemaking is to clarify rule language around testing requirements for NOR without changing the rule's intended effect. It is also meant to correct a typographical error in subsection (2)(b) concerning the weight of contaminants in reduced remains. These proposed changes fall under exception rulemaking.

Under RCW 34.05.310(4)(d), the Board may pursue "exception" rulemaking without filing a pre-proposal notice of inquiry for rules that correct typographical errors or clarify the language of a rule without changing its effect.

(continued on the next page)

I have asked Molly Dinardo, Board Staff, to provide an overview of WAC 246-500-055, the related post-implementation findings, and the exception rulemaking proposal for the Board's consideration.

Recommended Board Actions:

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

The Board approves the rulemaking proposal and directs Board staff to move forward with exception rulemaking under RCW 34.05.310(4)(d) to correct typographical errors and to clarify the testing parameters language in WAC 246-500-055 and submit the CR-102 to initiate rulemaking.

Staff

Molly Dinardo

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.

Handling of Human Remains – Rule Update

Chapter 246-500 WAC

January 9, 2023

Our Authority in Handling of Human Remains

- RCW 43.20.050 – Powers and Duties of the Board
    - (2)(f) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector-borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as may best be controlled by universal rule;

Engrossed Substitute Senate Bill (ESSB) 5001, Concerning human remains

- In 2019, the Legislature passed ESSB 5001
- Bill authorized two new disposition methods for human remains, alkaline hydrolysis and natural organic reduction
    - Alkaline hydrolysis is the accelerated process of decomposition using heat, pressure, water, and base chemical agents, resulting in bone fragments
    - Natural organic reduction is the accelerated process of decomposition in a contained vessel, resulting in soil
- Legislation did not include explicit Board authority, but there was recognition of health and sanitation issues related to new disposition methods
- The law became effective May 1, 2020
- The Department of Licensing (DOL) conducted rulemaking to incorporate new disposition methods, which became effective in June 2020

2020 Rulemaking

- WAC 246-500-010; Definitions
- WAC 246-500-020; Contact with human remains
- WAC 246-500-030; Refrigeration or embalming of human remains
- WAC 246-500-040; Transportation of human remains
- WAC 246-500-050; Cremated human remains
- **New Section:** WAC 246-500-053; Human remains reduced through alkaline hydrolysis
- **New Section:** WAC 246-500-055; Human remains reduced through natural organic reduction

Rule Implementation Plan

- Department of Licensing (DOL) Funeral and Cemetery Board has direct oversight of facilities engaging in activities related to human remains
- State Board of Health staff provides technical assistance by:
    - Partnering with DOL to communicate with licensees impacted by the rule
    - Working with Local Health Jurisdictions (LHJs) to provide support and guidance for their oversight of facilities in their communities
    - Responding to licensee's questions
    - Developing toolkit materials to answer anticipated questions for facilities
    - Creating and administering a post-rulemaking survey of facilities to determine whether implementation was successful and if additional guidance was needed

Survey Overview

Who was surveyed?

- Earth Funeral – Auburn, WA
- Herland Forest – Wahkiacus, WA
- Recompose – Seattle, WA
- Return Home – Auburn, WA

What was asked?

- Successful completion of any instances of natural organic reduction
- Number of completed instances
- Sample collection and third-party lab analysis
- Amount of final product produced from one instance
- Final product disposition following completion of reduction
- Barriers throughout the process

Survey Results

Successful Instances of NOR

- 3, 10, 80, 150

Final Product Quantity

- ~0.5 to 1 cubic yard / instance
- Equal to 18 to 36 40-lb bags of topsoil

Sample Collection & Analysis

- 100% of samples reported within parameters in WAC
- Barriers - cost and time of third-party lab analysis

Disposition of Final Product

- Released to recipient
- Remainder left in care of the facility

Next Steps - Exception Rulemaking

- Staff Proposing Exception Rulemaking for WAC 246-500-055, Human Remains Reduced Through Natural Organic Reduction
  - Abbreviated rulemaking process to fix a typographical error in subsection (2)(b) and clarify initial testing requirements in Table 500-A of the rule
  - Qualifies for exception rulemaking process under RCW 34.05.310(4)(d)

Table 500-A

Testing Parameters

Metals and other testing parameters	Limit (mg/kg dry weight), unless otherwise specified
Fecal coliform	< 1,000 Most probable number per gram of total solids (dry weight)
or	
Salmonella	< 3 Most probable number per 4 grams of total solids (dry weight)
and	
Arsenic	≤ 20 ppm
Cadmium	≤ 10 ppm
Lead	≤ 150 ppm
Mercury	≤ 8 ppm
Selenium	≤ 18 ppm

Recommended Board Action

- The Board may wish to consider, amend if necessary, and adopt the following motion:
    - The Board approves the rulemaking proposal and directs Board staff to move forward with exception rulemaking under RCW 34.05.310(4)(d) to correct typographical errors and to clarify the testing parameters language in WAC 246-500-055 and submit the CR-102 to initiate rulemaking.

THANK YOU

WASHINGTON STATE BOARD OF HEALTH

To request this document in an alternate format, 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

Questions?

RCW 43.20.050

Powers and duties of state board of health—Rule making—Delegation of authority—Enforcement of rules.

(1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules for group A public water systems, as defined in RCW 70A.125.010, necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants;

(b) Adopt rules as necessary for group B public water systems, as defined in RCW 70A.125.010. The rules shall, at a minimum, establish requirements regarding the initial design and construction of a public water system. The state board of health rules may waive some or all requirements for group B public water systems with fewer than five connections;

(c) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of human and animal excreta and animal remains;

(d) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, and cleanliness in public facilities including but not limited to food service establishments, schools, recreational facilities, and transient accommodations;

(e) Adopt rules for the imposition and use of isolation and quarantine;

(f) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as may best be controlled by universal rule; and

(g) Adopt rules for accessing existing databases for the purposes of performing health related research.

(3) The state board shall adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day.

(4) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

(5) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he or she shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

(6) The state board may advise the secretary on health policy issues pertaining to the department of health and the state.

[**2021 c 65 § 37**; **2011 c 27 § 1**; **2009 c 495 § 1**; **2007 c 343 § 11**; **1993 c 492 § 489**; **1992 c 34 § 4**. Prior: **1989 1st ex.s. c 9 § 210**; **1989 c 207 § 1**; **1985 c 213 § 1**; **1979 c 141 § 49**; **1967 ex.s. c 102 § 9**; **1965 c 8 § 43.20.050**; prior: (i) **1901 c 116 § 1**; **1891 c 98 § 2**; RRS § 6001. (ii) **1921 c 7 § 58**; RRS § 10816.]

RCW 34.05.310

Prenotice inquiry—Negotiated and pilot rules.

(1)(a) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies must solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rule making under RCW 34.05.320. The agency must prepare a statement of inquiry that:

(i) Identifies the specific statute or statutes authorizing the agency to adopt rules on this subject;

(ii) Discusses why rules on this subject may be needed and what they might accomplish;

(iii) Identifies other federal and state agencies that regulate this subject, and describes the process whereby the agency would coordinate the contemplated rule with these agencies;

(iv) Discusses the process by which the rule might be developed, including, but not limited to, negotiated rule making, pilot rule making, or agency study;

(v) Specifies the process by which interested parties can effectively participate in the decision to adopt a new rule and formulation of a proposed rule before its publication.

(b) The statement of inquiry must be filed with the code reviser for publication in the state register at least thirty days before the date the agency files notice of proposed rule making under RCW 34.05.320 and the statement, or a summary of the information contained in that statement, must be sent to any party that has requested receipt of the agency's statements of inquiry.

(2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rule making, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as provided in RCW 34.05.313 or as otherwise provided by the agency.

(3)(a) An agency must make a determination whether negotiated rule making, pilot rule making, or another process for generating participation from interested parties prior to development of the rule is appropriate.

(b) An agency must include a written justification in the rule-making file if an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided.

(4) Except as provided in subsection (5) of this section, this section does not apply to:

(a) Emergency rules adopted under RCW 34.05.350;

(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(c) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as

referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees under the authority of RCW **19.02.075** or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW **19.80.045**; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit.

(5) Notwithstanding subsection (4) of this section, this section applies to all rules adopted by the department of health or a disciplining authority specified in RCW **18.130.040** that set or adjust fees affecting professions regulated under chapter **18.130** RCW.

[**2019 c 303 § 1**; **2011 c 298 § 20**; **2004 c 31 § 1**; **1995 c 403 § 301**; **1994 c 249 § 1**; **1993 c 202 § 2**; **1989 c 175 § 5**; **1988 c 288 § 301**.]

WASHINGTON STATE BOARD OF HEALTH

Date: January 9, 2023

To: Washington State Board of Health Members

From: Keith Grellner, Board Chair

Subject: Complaint Against Washington State Local Health Officers

Background and Summary:

Under RCW 70.05.120, any person may file a complaint with the State Board of Health (Board) concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health. The Board's authority extends to state statutes in chapters 70.05, 70.24, and 70.46 RCW, or Board rules, regulations, and orders. When a complaint is received, the Board reviews it to determine whether it merits further action in accordance with Board Policy 2015-001. If it does, the Board may request a preliminary investigation.

On December 27, 2022, the Board received a complaint against "local health officers of the various counties of the state of Washington." No specific local health officers or jurisdictions are referenced in the complaint. The complaint, filed by a single complainant, alleges that local health officers are failing to carry out public health "laws or rules and regulations," specifically concerning COVID-19. The complaint alleges that the health officers are:

1. Refusing to comply with any of their clearly defined duties under the Washington State Communicable Disease and Pandemic Response Concept of Operations – Appendix 4: Pandemic Response, Emergency Support Function (ESF) 8: Public Health, Medical and Mortuary Services, Washington State Comprehensive Emergency Management Plan (CEMP).
2. Refusing to take any steps to control and prevent the spread of a dangerous and highly infectious SARS coronavirus in their jurisdictions under RCW 70.05.070.
3. Failing to protect the public by refusing to enforce rules and regulations relating to isolation and quarantine under WAC 246-100-040 through 060.
4. Failing to protect the public by enforcing the Statewide Face Covering Order issued by the Washington State Department of Health, as referenced in the Secretary of Health Amending Order 20-03, 20-03.10, Face Coverings – Statewide.

The allegation then goes on to state that the failure of local health officers to enforce COVID-19 public health rules or laws is causing preventable risks to the public and leading to preventable deaths. The complainant ends their letter with the request to "do everything reasonably possible to ensure that our public health laws are reasonably enforced."

The complainant submitted supplementary information to support their complaint on January 3, 2023. The supplemental information references a letter, dated December 9, 2022, from various local health officers and healthcare leaders in Washington outlining recommendations for prevention and treatment strategies to protect the public against the recent surge in viral respiratory illnesses like influenza, respiratory syncytial virus (RSV), and COVID-19. In addition, the supplemental document references Public Health Seattle King County's COVID-19 After Action Report and a letter of promulgation from Governor Jay Inslee for the 2019 Washington State Comprehensive Emergency Management Plan.

On October 31, 2022, Governor Jay Inslee ended all COVID emergency orders, including Washington's state of emergency declaration.[1,2] This decision marked the transition from the state's emergency pandemic response to ongoing monitoring and prevention activities, such as promoting health behaviors like masking and vaccinations. A news briefing from the Governor's office, dated October 28, 2022, states, "The COVID-19 pandemic remains, but it's no longer an emergency thanks to vaccinations, medical treatments, and the innumerable efforts of countless Washingtonians since the state had the nation's first documented case in January 2020."[1]

With this transition from pandemic emergency response, COVID-19 has been deactivated from Washington's Emergency Support Function (ESF) 8. Washington State's Comprehensive Emergency Plan Management (CEMP) provides a policy-level framework for statewide emergency planning, response, and initial recovery from emergencies and disasters in the state.[3] The CEMP also includes 20 ESFs, published in a separate document, that outline the specific roles, responsibilities, and functions of state agencies in emergencies. The Department of Health is the coordinating agency for ESF 8.

While all emergency orders were rescinded at the end of October, orders like the Secretary's statewide Face Covering Order remain active. The Secretary of Health's masking order continues to cover healthcare and long-term care facilities, as well as some correctional facilities.[1,2]

RCW 70.05.070 states, "[t]he local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall "take certain actions to protect public health, including to "[c]ontrol and [i]prevent the spread of any dangerous, contagious, or infectious diseases that may occur within his or her jurisdiction." Under Board rule, local health officers, "…shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, etc.….or other measures he or she deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information" (WAC 246-100-036(3)). The manner in which local health officers institute measures they deem necessary will most likely vary across jurisdictions.

Board Policy 2015-001 allows the subject local health officer or administrator to respond to the complaint. A notice was sent out to all local health officers in Washington to notify them of the complaint, that the Board will review the complaint during its January 9, 2023 meeting, and that they may respond in writing to the complaint if they so choose.

Recommended Board Actions:

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

The Board determines that an investigation is warranted and directs staff to conduct a preliminary investigation under RCW 70.05.120 and report their findings to the Board.

OR

The Board determines that the complaint does not merit a preliminary investigation due to lack of sufficient information indicating a possible violation of relevant public health law and directs staff to notify the complainant of the Board's decision.

Staff

Molly Dinardo, Policy Advisor

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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1. Governor Jay Inslee. State's COVID emergency order ends next week. Published October 28, 2022. Accessed December 29, 2022. https://www.governor.wa.gov/news-media/state%E2%80%99s-covid-emergency-order-ends-next-week

2. Governor Jay Inslee. Inslee announces end to remaining COVID-19 emergency orders and state of emergency by October 31. Published September 8, 2022. Accessed December 29, 2022. https://www.governor.wa.gov/news-media/inslee-announces-end-remaining-covid-19-emergency-orders-and-state-emergency-october-31

3. Washington Military Department Emergency Management Division. Washington State Comprehensive Emergency Management Plan | Technical Resources. ASPR TRACIE. Published 2019. Accessed December 28, 2022. https://asprtracie.hhs.gov/technical-resources/resource/5411/washington-state-comprehensive-emncy-management-plan

To the Honorable Members of the Washington State Board of Health:

In accordance with RCW 70.05.120, I, John G Gehman, hereby formally allege the failure of the local health officers of the various counties of the State of Washington to carry out the laws or rules and regulations concerning public health.

Local health officers are refusing to comply with any of their clearly defined duties under the Washington State *Communicable Disease and Pandemic Response Concept of Operations*. See Appendix 4: Pandemic Response, ESF 8: Public Health, Medical and Mortuary Services, *Washington State Comprehensive Emergency Management Plan*

Local health officers are refusing to take any steps to control and prevent the spread of a dangerous and highly infectious SARS coronavirus that is occuring in their jurisdictions. RCW 70.05.070

Local health officers are failing to protect the public by refusing to enforce the rules and regulations relating to isolation and quarantine. WAC 246-100-040 through 060

Local health officers are failing to protect the public by enforcing the Statewide Face Covering Order issued by the Washington State Department of Health which only mandates the use of a cloth face cover made of nothing more substantial than a single layer of any type of tightly woven fabric. See Order of the Secretary of Health Amending Order 20-03, 20-03.10, Face Coverings – Statewide

According to Governor Jay Inslee, local health officers refusing to enforce our public health laws is resulting in the easily prevented deaths of more than ten people per day in Washington State. See Governor Inslee News Release, September 8, 2022

Local health officers have known since at least May 2020 that SARS-CoV-2 infections cuase lymphopenia and significantly increase the risk of heart injury in pediatric patients – but refuse to take any steps to protect the public while actively recommending and sometimes encouraging behaviors they know will increase the publics risk of exposure to COVID-19. See Washington State Department of Health, May 18, 2020, *2019-nCoV Literature Situation Report (Lit Rep)* citing to *Cui et al. (May 17, 2020). Children with Coronavirus Disease 2019 (COVID-19): A Review of Demographic, Clinical, Laboratrory and Imaging Features in 2,597 Pediatric Patients. Journal of Medical Virology.*

People are dying from easily prevented infections. Children are suffering needlessly. And the people responsible for ensuring that these deaths and sufferings do not happen are doing everything they can to increase the chances that people will die and children will suffer.

Please do everything reasonably possible to ensure that our public health laws are faithfully enforced.

Respectfully submitted on December 27, 2020 by:

John G Gehman
328 S Davies Rd, Unit B
Lake Stevens, WA 98258
253 592 4573
jhnghmn@gmail.com

To the Honorable Members of the Washington State Board of Health:

Please accept and take into consideration the following supplementary information to the complaint filed by John G Gehman on December 27, 2022:

1. December 9, 2022 letter from numerous local health officers and health care leaders: Copy attached for ease of reference and available online at:

   https://jeffersoncountypublichealth.org/CivicAlerts.aspx?AID=1065

   https://www.tpchd.org/Home/Components/News/News/326/286?backlist=%2f

   https://kingcounty.gov/depts/health/news/2022/December/09-masks-indoors.aspx

   https://www.whatcomcounty.us/CivicAlerts.aspx?AID=3606

   https://clark.wa.gov/public-health/clark-county-health-officers-join-other-health-leaders-recommend-masks-indoors

   https://www.snohd.org/CivicAlerts.aspx?AID=736

   https://www.whatcomcounty.us/CivicAlerts.aspx?AID=3606

   The December 9th letter clearly shows that the State has declined to comply with it's duty to prevent or control the spread of dangerous and infectious diseases. See RCW 70.05.060 and . 070

   Our local health officers are expressly stating, in writing, their intent to continue allowing isolation to remain completely optional – in direct violation of RCW 70.05.120(4).

   Our local health officers are asking the public to wear "high-quality, well-fitting" masks as our sole method of protection "against both acquiring and spreading these infections to others," despite the fact that under the Secretary of Health's Statewide Face Covering Order, a "high-quality, well-fitting" mask is defined as g county a cloth face covering made of a single layer of any random scrap of tightly woven fabric.

2. Health Department for Seattle & King County - COVID-19 After Action Report Available online at:
   https://kingcounty.gov/depts/health/covid-19/data/~/media/depts/health/communicable-diseases/documents/C19/report-PHSKC-COVID-19-AAR-Sep2022.ashx

Here, King County officials have published a 175 page *COVID-19 After Action Report* ("AAR") thoroughly documenting the failures that resulted in more than 3,000 easily prevented deaths

and more than 500,000 easily prevented SARS-CoV-2 infections. *See* data available at: https://kingcounty.gov/depts/health/covid-19/data/current-metrics.aspx

Here, King County officials appear to be proud of the fact that they used $800,000,000 in public funds to provide isolation and quarantine services for 2,300 people without establishing a single process to properly and lawfully provide isolation and quarantine services for any of the other hundreds of thousands of infected people in need of assistance and guidance. *See* AAR, Pgs. 3, 50, and 77-80

Here, King County officials acknowledge an on-going failure to comply with any duty under our laws, rules, and regulations concerning public health. *See* AAR, Pgs. 4-5,

Here, King County officials acknowledge their failure to comply with any duty set forth under the State's *Communicable Disease and Pandemic Response Concept of Operations* despite Governor Jay Inslee repeatedly mandating compliance with the *Washington State Comprehensive Emergency Management Plan* under his COVID-19 state of emergency Proclamations. *See* AAR. Pgs. 32-36

Here, King County officials acknowledge that people died because they chose to fabricate an experimental pseudoscientific pandemic response strategy rather than simply implementing the plan Governor Jay Inslee promulgated a few months before the COVID-19 pandemic began, when he assured us that: "I beilieve it will be a significant tool for saving lives, protecting property, sustaining the economy, and preserving the environment." (Copy of the May 10, 2019, Letter of Promulgation, attached for ease of reference).

Respectfully Submitted this 3rd Day of January 2023, by:

John G Gehman
328 S Davies Rd, Unit B
Lake Stevens, WA 98258
253 592 4573
jhnghmn@gmail.com

Attachments:

1 – December 9, 2022 Letter: *Local Health Officers and Health Care Leaders Recommend Wearing Masks Indoors*; and

2 – May 10, 2019 Letter of Promulgation, 2019 Washington State Comprehensive Emergency Management Plan
Available online at: https://mil.wa.gov/asset/5cffcfb965217

Dec. 9, 2022

Local health officers and health care leaders recommend wearing masks indoors

Communities across our state and around the U.S. are experiencing an unprecedented surge in viral respiratory illnesses, including respiratory syncytial virus (RSV), influenza and COVID-19. As health officers and health care leaders working to improve the health of Washington residents, we recommend that everyone wear a high-quality, well-fitting mask when around others in indoor spaces to protect against both acquiring and spreading these infections to others.

We also urge everyone who is eligible to stay up to date on your vaccinations. Vaccinations are the most important way to protect against severe influenza and COVID-19 infections, including hospitalization and death. Everyone 6 months and older should be vaccinated against these diseases and those who are eligible for an updated COVID-19 booster should get it now.

Other necessary strategies include:

- Staying home from work and school and testing for COVID-19 if you develop symptoms.
- Having a plan for rapid treatment for COVID-19 and influenza for people who are at increased risk for severe infections.
- Improving indoor air quality through ventilation, filtration, and UV technology where appropriate.

We expect the flu to circulate for months, so now is the time to get your flu shot!

The flu is most dangerous for:

- Children under 5 years (especially under 2).
- Adults 65 years or older.
- Those who are pregnant.
- Anyone living with a health condition like asthma, diabetes or heart disease.

Consult with your physician or healthcare provider about the need for testing or treatment if you are at increased risk for severe influenza or are unsure.

In addition to RSV and influenza, new COVID-19 variants are taking hold and immunity from past vaccination is waning for many people who have not yet received an updated booster shot. The surge in these viruses is resulting in many illnesses, contributing to rising absenteeism in schools this fall. This impact extends to businesses, workers, and families.

For people who develop symptoms, and for parents of young children, it's important to know when to contact your physician or healthcare provider for advice or an evaluation.

Working together and using multiple, layered strategies to limit the spread and impact of these viruses will provide benefits to all of us during this fall and winter respiratory virus season and help relieve serious stress on our healthcare system.

Thank you to everyone for doing what you can to help.

Local health officers

Dimyana Abdelmalek, MD, MPH, Health Officer, Thurston County Public Health
Allison Berry, MD, MPH, Health Officer, Clallam and Jefferson Counties
Anthony L-T Chen, MD, MPH, Director of Health, Tacoma-Pierce County Health Department
Jeff Duchin, MD, Health Officer, Public Health - Seattle and King County
Amy Harley, MD, MPH, Co-Health Officer, Whatcom County Health Department
Frank James, MD, Health Officer, San Juan County Health & Community Services
Steven Krager, MD, MPH, Deputy Health Officer, Clark, Pacific and Skamania Counties
Mark Larson, MD, Health Officer, Kittitas County Public Health Department
James Lewis, MD, MPH, Health Officer, Snohomish Health District
Alan Melnick, MD, MPH, Health Officer, Clark, Pacific and Skamania Counties
Gib Morrow, MD, MPH, Health Officer, Kitsap Public Health District
Greg Thompson, MD, MPH, Co-Health Officer, Whatcom County Health Department

Health care leaders

June M. Altaras, MN, NEA-BC, Executive Vice President, Chief Quality, Safety and Nursing Officer, MultiCare Health System
Michael H. Anderson, MD, Chief Medical Officer, Virginia Mason Franciscan Health
Mike Barsotti, MD, FAAP, President, Washington Chapter of the American Academy of Pediatrics
Tori Bernier, Chief Nursing Officer, Summit Pacific Medical Center
Timothy Dellit, MD, interim Chief Executive Officer, UW Medicine, interim Executive Vice President for Medical Affairs and interim Dean of the UW School of Medicine
Mike Glenn, MHA, Chief Executive Officer, Jefferson Healthcare
Jennifer A. Graves, RN, MS, Vice President, Quality and Safety, Kaiser Permanente Northwest and Kaiser Permanente Washington, Regional Chief Nursing Executive, Kaiser Permanente Washington
Sean Gregory, Chief Executive, PeaceHealth Southwest Medical Center
Carlton Heine, MD, PhD, FACEP, FAWM, Chapter President, Washington American College of Emergency Physicians
Mark Johnson, MD, President, Washington Academy of Family Physicians
Scott Kennedy, MD, Chief Medical Officer, Olympic Medical Center
Robb Kimmes, Chief Executive Officer, Skyline Health
David Knoepfler, MD, MBA, Chief Medical Officer, FACP, FHM, Overlake Medical Center
Onora Lien, Executive Director, Northwest Healthcare Response Network
Carma Matti-Jackson, President & Chief Executive Officer, Washington Health Care Association
Ruth McDonald, MD, Chief Medical Officer, Seattle Children's
Deb Murphy, MPA, J.D., President & Chief Executive Officer, LeadingAge Washington
Ettore Palazzo, MD, FACP, Chief Medical & Quality Officer, EvergreenHealth
Charles Prosper, Chief Executive Officer, PeaceHealth St Joseph Medical Center
Katina Rue, DO, President, Washington State Medical Association
Cassie Sauer, President & Chief Executive Officer, Washington State Hospital Association
Arooj Simmonds, MD, Regional Chief Medical Officer, Puget Sound Region, Providence Swedish
Dori Unterseher MN, RN, Chief Nursing Officer, Harbor Regional Health
Lynnette Vehrs, RN, MN, President, Washington State Nurses Association
Darryl Wolfe, Chief Executive Officer, Olympic Medical Center

JAY INSLEE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

DATE: 05-10-2019

TO: Directors of State Agencies, Boards, Institutions of Higher Education, Commissions and Councils

FROM: Jay Inslee, Governor

SUBJECT: Letter of Promulgation, 2019 Washington State Comprehensive Emergency Management Plan

I am pleased to promulgate the 2019 Washington State Comprehensive Emergency Management Plan (CEMP). The CEMP provides the framework for statewide mitigation, preparedness (including prevention and protection), response and recovery activities while providing a structure for plan consistency throughout the state and facilitating interoperability between local, state, and federal governments.

We made every effort to comply with the US Department of Homeland Security (DHS) and Federal Emergency Management Agency (FEMA) requirements while implementing the state Emergency Management Act, Chapter 38.52 Revised Code of Washington (RCW). The CEMP supports the National Preparedness System and addresses requirements from the National Incident Management System (NIMS) and the Post Hurricane Katrina Reform Act into the state emergency management processes. The plan specifies authorities, functions, and responsibilities to establish collaborative action involving the whole community among local, state, tribal, federal, volunteer, private, and public sector organizations. By coordinating all phases of emergency management, the plan assists organizations in minimizing the impact of disasters and emergencies in Washington State. I believe it will be a significant tool for saving lives, protecting property, sustaining the economy, and preserving the environment.

Finally, the CEMP provides guidance to directors of state agencies, boards, institutions of higher education, (including the state and regional universities, The Evergreen State College, and the community and technical colleges), commissions, and councils of their two primary responsibilities in emergency management: (1) to support local jurisdictions through the State Emergency Operations Center, and (2) to maintain a comprehensive internal process to ensure continuity of government and the ability to conduct daily business before, during, and after a catastrophic incident.

Complaint References

References Cited in Complaint Against Local Health Officers

- Washington State Communicable Disease and Pandemic Response Concept of Operations – Appendix 4: Pandemic Response, Emergency Support Function (ESF) 8: Public Health, Medical and Mortuary Services, Washington State Comprehensive Emergency Management Plan (CEMP).
    - The complaint references that local health officers are refusing to comply with their clearly defined duties under ESF 8
- RCW 70.05.070
    - Complaint references that local health officers are refusing to take any steps to control and prevent the spread of a dangerous and highly infectious SARS coronavirus in their jurisdictions under RCW 70.05.070
- WAC 246-100-040 through 060
    - Complaint references that local health officers are failing to protect the public by refusing to enforce rules and regulations relating to isolation and quarantine under WAC 246-100-040 through 060
- Secretary of Health Amending Order 20-03, 20-03.10, Face Coverings – Statewide
    - Complaint references that local health officers are failing to protect the public by enforcing the Statewide Face Covering Order
- Governor Jay Inslee News Release, September 8, 2022
    - Complaint references that Governor Inslee's release states local health officers are refusing to enforce public health laws, and it's resulting in "easily prevented deaths of more than ten people per day in Washington State"
- Washington State Department of Health May 18, 2020, 2019-nCOV Literature Situation Report
    - Complaint references that local health officers have known since May 2020 that COVID-19 infections cause lymphopenia and increase the risk of heart injury in pediatric patients, yet they refuse to take any steps to protect the public and are actively recommending and sometimes encouraging behaviors that will increase the risk of COVID-19 exposure.

References Cited in Supplemental Document for Complaint

- Letter from Local Health Officers and Health Care Leaders, December 9, 2022, published by multiple health departments
    - https://jeffersoncountypublichealth.org/CivicAlerts.aspx?AID=1065
    - https://www.tpchd.org/home/components/news/news/326/286?backlist=%2f
    - https://kingcounty.gov/depts/health/news/2022/December/09-masks-indoors.aspx
    - https://www.whatcomcounty.us/civicalerts.aspx?AID=3606

    - https://clark.wa.gov/public-health/clark-county-health-officers-join-other-health-leaders-recommend-masks-indoors
    - http://www.snohd.org/civicalerts.aspx?AID=736
    - The complaint states that this letter shows the State has declined to comply with its duty to prevent or control the spread of dangerous and infectious diseases under RCW 70.05.060 (powers and duties of local boards of health) and RCW 70.05.070 (powers and duties of local health officers).
- RCW 70.05.120(4)
    - Complaint alleges that local health officers are expressly stating, in writing, their intent to continue allowing isolation to remain completely optional, and it's a violation of RCW 70.05.120(4)
- Public Health Seattle King County COVID-19 After Action Report (AAR)
    - Complaint references this report and alleges that King County officials failed to establish processes to provide isolation and quarantine services for people who needed them (pages 3, 50, and 77-80 of the AAR).
    - Complaint references that in the AAR, officials acknowledge they did not comply with "any duty under our laws, rules, and regulations concerning public health" (pages 4-5 of the AAR) and duties set forth under the WA State Communicable Disease and Pandemic Response Concept of Operations and Washington State Comprehensive Emergency Management Plan (pages 32-36 of the AAR).
    - Complaint states that King County officials did not appropriately implement Washington's Comprehensive Emergency Management Plan (CEMP), which was updated in 2019 and references the promulgation letter signed by Governor Jay Inslee, acknowledging and approving this updated plan for circulation.

RCW 70.05.120

Violations—Remedies—Penalties.

(1) Any local health officer or administrative officer appointed under RCW **70.05.040**, if any, who shall refuse or neglect to obey or enforce the provisions of chapters **70.05**, 70.24, and **70.46** RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter **34.05** RCW, and the rules and regulations of the state board of health adopted thereunder.

(2) Any member of a local board of health who shall violate any of the provisions of chapters **70.05**, 70.24, and **70.46** RCW or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

(3) Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

(4) Any person violating any of the provisions of chapters **70.05**, 70.24, and **70.46** RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment.

[**2003 c 53 § 350**; **1999 c 391 § 6**; **1993 c 492 § 241**; **1984 c 25 § 8**; **1967 ex.s. c 51 § 17**.]

Washington State Board of Health
Policy & Procedure

Draft Policy Number:	**2015-001**
Subject:	**Responding to Complaints Against a Local Health Officer or Administrative Officer Under RCW 70.05.120**
Approved Date:	**January 14, 2015 (Revised November 9, 2022)**

Policy Statement

RCW 70.05.120 allows any person to file a complaint with the Washington State Board of Health (Board) alleging the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health. The Board will review complaints that allege a local health officer or administrative officer has refused or neglected to obey or enforce the provisions of chapters 70.05, 70.24 and 70.46 RCW, or Board rules, regulations, or orders. The Board will review a complaint to determine whether it merits a preliminary investigation. The Board may dismiss a complaint that is beyond the scope of RCW 70.05.120, lacks sufficient information to support a preliminary investigation, or is frivolous in nature. If the Board determines a preliminary investigation is warranted, the Board will assign staff or a third-party investigator, as appropriate, to conduct a preliminary investigation and to report their findings to the Board. The Board will then review the findings of the investigation and determine how to proceed. The Board may determine that further information is necessary, close the complaint, or hold a hearing based on the findings of the preliminary investigation.

Procedure

1) **Complaint Review and Notifications:** Board staff, in consultation with the Executive Director, will respond to the complainant within five business days acknowledging receipt of the complaint. The Executive Director or staff will notify Board members that a complaint has been received and will be brought to the Board for review at the next regularly scheduled Board meeting. If no regular meeting is scheduled within 60 days of receipt of the complaint, or if the agenda for the regular meeting cannot accommodate review of the complaint, the Executive Director will notify the Chair of the need to schedule a special Board meeting for the purpose of reviewing the complaint. The Executive Director will also notify the subject local health official and will provide a copy of the complaint for their information and review and inform the official that they may provide a written response to the complaint if they so choose. The Executive Director will notify the complainant and the subject local health official of dates and times that the Board is scheduled to review or discuss the complaint. As part of the initial review, the Board will determine whether a complaint falls within its authority to review, and whether the complaint merits further action. Board staff may consolidate multiple complaints against

the same official(s) about the same subject matter for review. The Board may dismiss a complaint that is beyond the scope of RCW 70.05.120, lacks sufficient information to support a preliminary investigation, or is frivolous in nature. The Board will notify the complainant(s) and the local health official named in the complaint(s) of complaint dismissal.

2) **Preliminary Investigation:** If the Board determines that a complaint is within the scope of RCW 70.05.120, and merits further review, the Board may direct staff to conduct a preliminary investigation. The Board may identify a Board member to be available for consultation with staff during the preliminary investigation. If a Board member is consulted, they will recuse themself from further participation in resolution of the complaint. The Board may direct staff to hire a third-party investigator to conduct the preliminary investigation when necessary to avoid a potential conflict of interest with the Board. The preliminary investigation may include but may not be limited to: a review of relevant statutory and rule authorities; gathering other background information and evidence; and interviewing the complainant, the local health official named in the complaint, and others regarding the complainant's allegations. Background information includes, but is not limited to, laws, rules, court decisions, and documents submitted by the complainant and local health official named in the complaint, and other state or local entities involved or implicated in the complaint. In addition to conducting interviews, the individual(s) designated to conduct the investigation may consult with content or industry experts, appropriate representatives of named or implicated agencies, and others as appropriate. The Board may request the Department of Health to provide assistance in conducting the preliminary investigation.

3) **Findings:** Board staff or a third-party investigator assigned to conduct the investigation will present the findings of the preliminary investigation and a recommendation for Board consideration at a Board meeting. As described above, Board staff will notify the complainant and subject local health official of the date and time of the Board meeting at which the Board will review findings. The complainant and local health official named in the complaint will be given the opportunity to provide comment at the meeting.

4) **Review of Findings** Based on the findings of the preliminary investigation, the Board will determine how to proceed. For example, it may request further information if it cannot reach a conclusion based on the results of the preliminary investigation; close the complaint if it concludes that the local health officer or administrative officer did not refuse or fail to obey or enforce the provisions of chapter 70.05, 70.24 or 70.46 RCW, or Board rules, regulations, or orders; or, hold a hearing under the Administrative Procedure Act (APA), chapter 34.05 RCW to determine if the local officer is guilty of the alleged acts.

5) **Hearing:** If a hearing is called, the Board will designate a presiding officer for the proceedings in accordance with RCW 34.05.425. The Board, members of the Board, or an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) may serve as the presiding officer. If an ALJ is designated, the Board will determine the scope

of the ALJ's duties at that time. The ALJ's scope of duties may include presiding over the hearing and/or serving as decision maker. If an ALJ is involved, OAH will schedule the proceedings. The proceedings will be conducted in accordance with the APA and applicable procedural rules.

6) **Notice of Final Disposition**: Unless the Board has called a hearing and OAH has notified the local health official named in the complaint(s) of the final disposition, the Board will notify the complainant(s) and the local health official of the final disposition of the complaint.