



November 6, 2023

**Subject: Informative – Information on Agency Rulemaking**

Dear Tribal Leaders & Tribal Partners,

**We thank you for your partnership and guidance on the Washington State Department of Health rulemaking process.** As an agency, we are committed to honoring the Tribal sovereignty of Washington’s first Nations. As part of this commitment, and in appreciation of the governance structures of Tribal Nations, we welcome your expertise and collaboration in these current and upcoming rulemaking activities. We prioritize Tribal involvement early in the process to better ensure we are incorporating Tribal expertise, perspectives, and transparency in agency rulemaking.

In accordance with chapter 43.376 RCW, the Washington State Centennial Accord of 1989, and the Department of Health’s (DOH) Tribal Consultation and Collaboration Procedure, DOH invites you to review the list of rulemaking activities below and actively collaborate with staff on all topics that may be of interest.

We appreciate your feedback, if you have any suggestions or questions about how to best honor Tribal sovereignty and strengthen agency processes, please let us know.

To provide comments or requests for additional information, please contact:

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Sincerely,

A handwritten signature in blue ink, appearing to read "Candice Wilson", with a stylized flourish above the name.

Candice Wilson – Quat’ztenant (Lummi)  
Tribal Policy Director  
Office of Tribal Public Health & Relations

Cc: Umair A. Shah, MD, MPH, Secretary of Health, Department of Health  
Jessica Todorovich, Chief of Staff, Department of Health  
Kristin Peterson, Chief of Policy, Planning & Evaluation, Department of Health  
Elizabeth Perez, Chief of Public Affairs and Equity, Department of Health  
Tao Sheng Kwan-Gett, MD, MPH, Chief Science Officer, Department of Health  
Lacy Fehrenbach, Deputy Secretary, Prevention Safety & Health, Department of Health  
Michelle Davis, Executive Director, Washington State Board of Health

## DOH Rule Report for October 16-31, 2023

The following Department of Health and State Board of Health rules and documents were filed with the Washington State's Code Reviser Office between October 16 -31, 2023.

More information on the following rules is available at:

[The Washington State Department of Health Rule-making Activity Website](#)

### Department of Health

#### Preproposal Statement of Inquiry (CR-101)

**Dental - Adding Facility Types to the List of Opioid Prescribing Exclusions for Dentists.** The Dental Quality Assurance Commission is considering adding residential habilitation centers, nursing homes, and long-term hospitals to the list of opioid prescribing exclusions in WAC 246-817-905 Exclusions. Filed as WSR 23-22-030.

**Dental Therapist Profession.** The Department of Health is considering establishing a new chapter of rules, chapter 246-819 WAC, for the dental therapist profession to implement Engrossed Substitute House Bill (ESHB) 1678 (Chapter 460, Laws of 2023). Filed as WSR 23-22-058.

**Fee Updates for Acute Care Hospitals and Private Psychiatric Hospitals.** The Department of Health is considering updates to WAC 246-322-990 regarding acute care and private psychiatric hospital fees to address funding needs. An update may be necessary to adequately fund the hospital inspection, investigation, and licensing programs to protect patients. Filed as WSR 23-22-096.

**Music Therapist Profession.** The Department of Health (department) is considering creating a new chapter of rules under Title 246 WAC to establish licensing regulations for music therapists, including fees. The department will consider any necessary rules for an advisory committee. Filed as WSR 23-22-034.

**Prescription Monitoring Program (PMP) - Clarifying terms and information about prescription history for the PMP.** The Department of health (department) is considering clarifying that prescribers can request the history of prescriptions they have written. The department is considering changes to WAC 246-470- 010, 246-470-030, and 246-470-050 and potentially other related sections in chapter 246-470 WAC to help clarify rules including terms and definitions relating to the Prescription Monitoring Program. Filed as WSR 23-22-092.

**Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).** The Department of Health (department) is considering amending chapter 246-790 WAC to increase flexibility in allowed vendor types and update program requirements for vendors. The department is also considering amendments to the Participant Compliance rules to reflect virtual service options. Filed as WSR 23-22-061.

#### Proposed Rule Making (CR-102)

**Multistate Nursing License Fee (new) and Increase to Nursing Center Surcharge Fee.** The Department of Health in consultation with the Board of Nursing, formerly known as the Nursing Care Quality Assurance Commission, is proposing to increase the nursing center surcharge fee, and proposing to create a new fee for a multistate nursing license in WAC 246-840-990. The proposed rule implements Substitute Senate Bill (SSB) 5499, Multistate Nurse Licensure Compact (Chapter 123, Laws of 2023). Filed as WSR 23-22-060

**Nursing Home Administrator Retired Active License Fee.** The Department of Health (department) is proposing to establish a retired active fee for the nursing home administrator license in WAC 246-843-990. Filed as [WSR 23-22-094](#)

### Expedited Rules (CR105)

**Pharmacy - Updating Reference to United States Pharmacopeia (USP) General Chapters 795 and 797.** The Pharmacy Quality Assurance Commission is proposing a revision to WAC 246-945-100, Compounding minimum standards, to update the rule to the most recent version of the USP – National Formulary <795> and <797>. Filed as WSR 23-22-035

### Emergency Rules (CR-103E)

None filed during this period.

### Adopted Rules (CR103P)

**Athletic Trainer Profession Health Equity Continuing Education.** The Department of Health adopted an amendment to WAC 246-916-060 to implement Engrossed Substitute Senate Bill (ESSB) 5229 (chapter 276, Laws of 2021), codified as RCW 43.70.613. The department adopted the health equity model rules, WAC 246-12-800 through 246-12-830, for the athletic trainer profession to comply with the statute. Filed as WSR 23-22-097

**Optometrist Health Equity Continuing Education (CE).** The Board of Optometry adopted WAC 246-851-225, a new section requiring two hours of health equity continuing education (CE) every four years for licensed optometrists. Health equity CE programs must meet the standards created in the Department of Health model rules in WAC 246-12-800 through 246-12-830. The adopted rule does not add to the total CE hours required to renew the license. Filed as WSR 23-22-066

**Optometrist Continuing Education (CE) Requirements.** The Board of Optometry adopted changes to existing rules, WAC 246-851-090 and WAC 246-851-125 through 246-851-230, related to CE requirements for licensed optometrists. Adopted amendments include online continuing education, new definitions, limits on types and categories of CE hours, reference to other required trainings, CE documentation requirements, clarifying self-study requirements, and certain allowances during a declared state of emergency. Filed as WSR 23-22-068

**Optometrist – Language Updates Related to Substance Use Monitoring Program.** The Board of Optometry amended WAC 246-851-440 through 246-851-470 to align with technical changes made by Substitute Senate Bill (SSB) 5496 (Chapter 43, Laws of 2022). Changes align the rules with currently accepted language for substance use disorders and related monitoring programs, and include technical clarifications as needed without changing the rule’s effect. Filed as WSR 23-22-067

**Radiation Machine Facility Fees, WAC 246-254-053.** The Department of Health (department) adopted a fee increase to cover the costs of operating the Radiation Machine Facility Program. The department also adopted changes to machine categories within the fee schedule to allow the department to better track and manage X-ray Machines across Washington. This will allow the department to be more efficient in regulatory and inspection processes. Filed as WSR 23-22-095

### Miscellaneous

**Hospital Trauma Designation CR 101 and CR102 Recission Memos.** These memos serve as notice that the Department of Health withdrew the Preproposal Statement of Inquiry (CR-101), filed January 8, 2021, published under WSR 21-03-011, and the Proposed Rule (CR-102) filed on May 24, 2023, published under WSR 23-11-166. The department withdrew the CR-101 and CR-102 because the input

received from interested parties during public comment indicated substantial opposition to the rule as proposed. As a result, the department will continue to use its existing authority and rules to determine the need for new trauma centers and the optimal distribution of trauma services to ensure equitable access to trauma care. Filed as WSR 23-22-108 and WSR 23-22-109

## State Board of Health

### Preproposal Statement of Inquiry (CR-101)

**Auditory Screening of School-Age Children.** The Washington State Board of Health (board) is considering amending the auditory screening rules in chapter 246-760 WAC, Auditory and Visual Standards – School Districts, to align with current national evidence-based practices and assess potential options regarding whether to include otoacoustic emission (OAE) screening technology in the board’s rules. The board may also consider other technical or editorial changes as needed. Filed as WSR 23-22-004

### Proposed Rule Making (CR-102)

**On-Site Sewage Systems.** The State Board of Health is proposing amendments to address changes to existing requirements, including requirements governing local management plans, repairs, registration of proprietary treatment products, minimum lot sizes, treatment levels, and licensing of operations and maintenance providers. The proposed rule establishes new requirements, including requirements for field verification of proprietary products, property transfer inspections, remediation, and product supply chain issues. The proposed rule also makes several editorial updates to improve clarity and repeals obsolete rules. Filed as WSR 23-22-062

### Expedited Rules (CR-105)

None filed during this period.

### Emergency Rules (CR-103E)

None filed during this period.

### Adopted Rules (CR-103P)

None filed during this period.

### Miscellaneous

None filed during this period.