



October 16, 2023

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

Dear Tribal Leaders & Tribal Partners,

We are writing to provide information in **partnership and guidance on the Washington State Department of Health rulemaking process**. We are committed to honoring the government-to-government relationship with sovereign Tribal nations and tribal partners.

We prioritize Tribal involvement early in the process to better ensure we are incorporating Tribal expertise, perspectives, and transparency in agency rulemaking. As part of this commitment, and in appreciation of the governance structures, we welcome your expertise and partnership in these current and upcoming rulemaking activities.

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

Candice Wilson - Quatz'tenaut  
Tribal Policy Director  
[candice.wilson@doh.wa.gov](mailto:candice.wilson@doh.wa.gov)  
360-819-7626

Tami Thompson  
Regulatory Affairs Manager  
[tami.thompson@doh.wa.gov](mailto:tami.thompson@doh.wa.gov)  
360-628-0096

**We appreciate your time, consideration, and partnership in guidance with the Washington State Department of Health rulemaking process.**

Respectfully,

A handwritten signature in blue ink, appearing to read "Candice Wilson".

**Candice Wilson – Quatz'tenaut (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, Chief of Prevention, Department of Health  
Michelle Davis, Executive Director, Washington State Board of Health

**Attachments: DOH Rulemaking October 1-15, 2023**

## Rulemaking for Oct 1-15, 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 1st-15th, 2023.

### Department of Health Filings

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

**Classifying Wildlife Capture Drugs as Approved Legend Drugs for the Department of Fish and Wildlife (WDFW).** The Pharmacy Quality Assurance Commission is considering amending WAC 246-945-507 to add certain intramammary antibiotic formulation drugs to the list of approved legend drugs in response to a petition from a veterinarian at the Washington Department of Fish and Wildlife (WDFW). Filed as WSR 23-21-011

**Dental Hygiene Health Equity Continuing Education Requirements.** The Department of Health is considering creating a new rule in chapter 246-815 to adopt the health equity continuing education (CE) model rules, WAC 246-12-800 through 246-12-830, to comply with RCW 43.70.613. The department will also consider whether additional CE hours and course topics should be included. Filed as WSR 23-21-070

**Dialysate and Dialysis Device Manufacturers and Wholesalers in Home Dialysis Programs.** The Pharmacy Quality Assurance Commission is considering amending and creating new sections in chapter 246-945 WAC to include manufacturers and distributors of dialysate and dialysis devices in home dialysis program rules under the commission's jurisdiction. The amendments under consideration are in response to statutory changes made by Substitute House Bill (SHB) 1675 (chapter 23, Laws of 2022). Filed as WSR 23-21-010

**Fenfluramine Removal from List of Schedule IV Substances.** The Pharmacy Quality Assurance Commission is considering amending WAC 246-945-055 to remove fenfluramine from the list of Schedule IV substances and adding a new section to chapter 246-945 WAC to establish a list of schedule IV exemptions. Fenfluramine is a medication used in the treatment of seizures associated with certain syndromes and as an appetite suppressant and was removed from the Drug Enforcement Administration's (DEA) federal Controlled Substances Act (CSA) in December of 2022. Filed as WSR 23-20-119

**Medical assistants— Various Provisions.** The Department of Health is considering adding a new section of rule to address the medication administration requirements for the medical assistant-registered credential to align with recent legislation and considering updating the medical assistant-certified training and certification requirements to expand the types of apprenticeship programs accepted to meet the training requirements to allow experienced medical assistants to enter the Washington workforce more easily. Engrossed Substitute House Bill (ESHB) 1073 (Chapter 134, Laws of 2023). Filed as WSR 23-20-118

**Prescription Drug “White-Bagging” and “Brown-Bagging” Regulation Transfer Practices.** The Pharmacy Quality Assurance Commission is considering creating a new section(s) in chapter 246-945 WAC related to the regulation of the practices of “white bagging” and “brown bagging” or any other transfer of a prescription or drug for the purpose

of re-dispensing or subsequent administration to a patient. Concerns have been raised over ensuring that the integrity and quality of these medications is maintained if such practices are used by prescribers, hospitals, or patients because these practices can create an unknown chain of custody. Filed as WSR 23-20-115

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

#### **Licensed Practical Nurse (LPN) and Registered Nurse (RN) Temporary Practice Permit.**

The Washington State Board of Nursing is proposing amendments to the effective date of temporary practice permits in WAC 246-840-095. The proposed rule reduces the length of time a LPN or RN may hold a temporary practice permit and updates the criteria to issue the permit. The amendments align the internal board process with rule language and implement Second Substitute House Bill (2SHB) 1009 (chapter 165, Laws of 2023), Military Spouses—Professional Licensing and Employment. Filed as WSR [23-21-071](#)

#### **Nursing Home Administrator Licensing Requirements and Retired-Active License.**

The Board of Nursing Home Administrators is proposing amendments and a new rule to create a retired-active license, and temporary practice permits. Clearer processes, greater access to a temporary license and the creation of a retired active status may create professionals who are able to help nursing homes transition between nursing home administrators or assist in other emergency situations. WAC 246-843-071, WAC 246-843-180, WAC 246-843-090, WAC 246-843-130, WAC 246-843-180, and WAC 246-843-231. Filed as WSR 23-20-116

#### **Reducing Barriers for Substance Use Disorder Professional Certification**

The Department of Health is proposing amendments for substance use disorder professionals and trainees to reduce barriers to certification. The proposed rules include removing the requirement to verify educational coursework for applicants with a national certification, making pharmacists eligible for the alternative training pathway in, and removing the obsolete AIDS training from the list of probationary license requirements. Amending WAC 246-811-070, WAC 246-811-076, and WAC 246-811-300. Filed as 23-20-120

### **Adopted Rules (CR-103P)**

**Chiropractic Health Equity Continuing Education.** The Chiropractic Quality Assurance Commission adopted the Department of Health equity model rules to implement Engrossed Substitute Senate Bill (ESSB) 5229 (chapter 276, Laws of 2021). The adopted rule establishes minimum standards for chiropractors of two hours of health equity continuing education (CE) every four years. The rule as adopted does not change the total number of CE hours but requires two hours in health equity CE every four years within the existing number of CE hours required. WAC 246-808-150. Filed as WSR 23-20-114

**Nursing Assistant Chapter Rewrite.** The Board of Nursing adopted a new chapter and amendments which represent a collaboration between the Board of Nursing and the Department of Health to address necessary changes in the nursing assistant rules and to consolidate, renumber, eliminate redundancy, and address necessary changes in the nursing assistant rules. Repealed chapter 246-841 WAC, repealed chapter 246-842 WAC, adopted chapter 246-841A WAC. Filed as WSR 23-20-117

**Radiation Protection, Compliance with U.S. Nuclear Regulatory Commission Rules.** The Department of Health adopted amendments to revise radiation protection standards,

packaging, and transportation of radioactive material. This rule is required to comply with RCW 70A.388.040, State Radiation Control Agency, and RCW 70A.388.110, Federal-state agreements. Chapter 246-221 WAC, Chapter 246-231 WAC, Chapter 246-237 WAC, and Chapter 246-240 WAC. Filed as WSR 23-21-056

**Radionuclide Emissions Standards.** The Department of Health adopted national standards sources of radionuclide emissions by reference. This rulemaking updates the reference to national standards for sources of radionuclide emissions federal regulations to the most recent version, adopted in 2023. Filed as WSR 23-21-055

### **Emergency Rules (CR-103E)**

**Temporary Suspension of Home Care Aide Training Requirement.** The Department of Health adopted an emergency rule to temporarily remove the requirement for home care aide applicants to become certified within two years of completing training. These rules continue without change emergency rules most recently filed on June 13, 2023, under WSR 23-13-068. They are being continued while rulemaking is in progress to consider permanent training timelines for home care aides. WAC 246-980-100 Filed as WSR 23-21-065

### **Miscellaneous Documents**

**Department of Health, Dispensing Optician Examining Committee Meeting Schedule** for the year 2023. Filed as WSR 23-20-094

**Washington Hospital Staffing Advisory Committee Schedule of Regular Meetings** for the year 2023. Filed as WSR 23-20-095

**RESCISSION MEMO by Washington State Board of Nursing.** The Emergency rule amending specific training requirements for Nursing Assistant Certified (NAC) and Nursing Assistant Registered (NAR) has been rescinded with an effective date of November 4, 2023, because it will be replaced by permanent rules in chapter 246-841A WAC. Filed as WSR 23-21-003

**RESCISSION MEMO by Washington State Board of Nursing.** The board is rescinding this emergency rule which amended specific training requirements for Nursing Assistant Certified (NAC) and Nursing Assistant Registered (NAR) effective November 4, 2023, because it is no longer necessary. Filed as WSR 23-21-004

## **Washington State Board of Health Filings**

### **Emergency Rules (CR-103E)**

**On-site Sewage Proprietary Treatment Products Emergency Rule.** The State Board of Health (board) adopted an emergency rule regarding substitute components of registered products as part of the certification and registration of proprietary treatment products used in on-site sewage systems. The original emergency rule was filed on June 15, 2022 (WSR 22-13-101). Emergency rules have been filed continuously thereafter with the most recent filing on June 09, 2023. This emergency rule is being adopted without change of the previous emergency rule. This emergency rules amends WAC 246-272A-0110. Filed as WSR 23-21-016