

WSR 24-15-056

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed July 16, 2024, 12:18 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.328(5).

Title of Rule and Other Identifying Information: Chapter 246-105 WAC, Immunization of child care and school children against certain vaccine-preventable diseases.

Hearing Location(s): On September 18, 2024, at 1:00 p.m., at the Department of Health, Room 166 and 167, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_PEqVHOSyQ367dCANypGB7Q. After registering, you will receive a confirmation email containing information about joining the webinar. Individuals wishing to attend this hearing may attend either in person or virtually.

Date of Intended Adoption: September 25, 2024.

Submit Written Comments to: Meghan Cichy, P.O. Box 47830, Olympia, WA 98504-7830, phone 564-669-3834, email Meghan.Cichy@doh.wa.gov, beginning the date and time of filing, by September 18, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Meghan Cichy, phone 564-669-3834, TTY 771 [711], email Meghan.Cichy@doh.wa.gov, by September 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under WAC 246-105-040, the department of health (department) develops and distributes implementation guidelines for schools and child care centers consistent with national immunization guidelines. Guidelines are determined by the Centers for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices (ACIP) and are published annually in the Morbidity and Mortality Weekly Report as the Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States.

The proposed change to WAC 246-105-040 updates the ACIP recommendations from the 2019 version to the most recent 2024 version. The proposed rule references the "*Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States, 2024*"; as published in the *Morbidity and Mortality Weekly Report* (MMWR) 2024; 73(1):6-10."

Under WAC 246-105-060, schools and child care centers are required to submit an annual immunization status report. WAC 246-105-060 requires these reports to be submitted to the department by November 1st. The department, in collaboration with schools, has determined it is necessary to update WAC 246-105-060 to remove the school immunization status reporting date from the rule. The proposed change removes the reporting date from the rule and replace it with, "Submit an annual immunization status report under RCW 28A.210.110 at a time and in a manner approved by the department."

Reasons Supporting Proposal: WAC 246-105-040 references the 2019 immunization schedule. Changes to the immunization schedule between 2019 and 2024 impact the recommended ages of vaccine administration for required school and child care immunizations requiring the WAC to be updated. Updating the reference to the 2024 guidelines would allow

the rule to remain consistent with national consensus regulating clinical standards of care as recommended by the CDC's ACIP.

For WAC 246-105-060, RCW 28A.210.110 requires the chief administrator to file a written annual report with the department on the immunization status of students or children attending child care on a date and on forms prescribed by the department. The deadline by which schools and child care centers must report is communicated in multiple ways and shown on the reporting form. Removing the date from the rule would enable the department to determine the reporting date as authorized by RCW 28A.210.110 and provide flexibility to better support schools and child care centers in meeting the reporting deadline.

Statutory Authority for Adoption: RCW 43.20.050, 28A.210.110.

Statute Being Implemented: RCW 43.20.050, 28A.210.110.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: State board of health and department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Meghan Cichy, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-3834; Implementation: Jeux Rinehald, 111 Israel Road S.E., Tumwater, WA 98501, 360-688-6142; and Enforcement: Molly Dinardo, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-3455.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes to WAC 246-105-040 are exempt under RCW 34.05.328 (5)(b)(iii) because they specifically reference national consensus codes that generally establish industry standards. The proposed changes to WAC 246-105-060 are exempt under RCW 34.05.328 (5)(b)(v). The reporting requirements are explicitly and specifically dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are 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; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: WAC 246-105-040 adopts national consensus codes and is exempt under RCW 34.05.310 (4)(c) Rules adopting or incorporating by reference without material change ... 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.

WAC 246-105-060 is exempt under RCW 34.05.310 (4)(e) because the requirements are explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

July 16, 2024

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5424.1

AMENDATORY SECTION (Amending WSR 19-21-161, filed 10/22/19, effective 11/22/19)

WAC 246-105-040 Requirements based on national immunization guidelines. The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against, or provide documentation of immunity against, each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the national immunization guidelines in the "*Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States, ((2019)) 2024*"; as published in the *Morbidity and Mortality Weekly Report (MMWR)* ((2019; 68(5):112-114)) 2024; 73(1):6-10.

(2) As part of the implementation guidelines, the department shall align the ages and intervals specified in the national immunization guidelines and this chapter with a corresponding grade level.

(3) In addition to the ages and intervals required by subsections (1) and (2) of this section, the following vaccine administration guidelines shall apply.

(a) Schools shall accept proof of immunization status by grade level as required by subsection (2) of this section.

(b) Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

(i) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(ii) Diagnosis or verification of a history of varicella disease by a health care provider acting within their scope of practice; or

(iii) Diagnosis or verification of a history of herpes zoster by a health care provider acting within their scope of practice; or

(iv) Serologic proof of immunity against varicella; or

(v) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

AMENDATORY SECTION (Amending WSR 19-21-161, filed 10/22/19, effective 8/1/20)

WAC 246-105-060 Duties of schools and child care centers. (1) Schools and child care centers shall require on or before the first

day of attendance either a CIS or COE form that documents a child's immunization status as required by WAC 246-105-050:

(a) For new enrollees registering for admission into preschool and kindergarten through grade (~~(twelve)~~) 12 or a child care center as a requirement of admission;

(b) Annually for continued enrollment in a child care center; and

(c) Any child identified as experiencing homelessness under the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11431 et seq., or in foster care under 20 U.S.C. 6311 (g) (1) (E) lacking documentation of immunization status on or before the first day of attendance must be immediately enrolled and allowed to fully participate in all school activities.

(2) A school nurse, child care health consultant, or chief administrator shall use information from the CIS or COE form to determine the immunization status of a child as: Fully immunized, out of compliance, conditional, or exempt.

(a) For enrollees attending under conditional status or an enrollee with an expired temporary medical exemption, except those identified under subsection (1)(c) of this section, the following schedule for documenting proof of full immunization applies:

(i) Any doses the child is eligible to receive based on the requirements established in WAC 246-105-040 must be administered on or before the first day of attendance. Any additional missing immunizations must be received within (~~(thirty)~~) 30 calendar days after the first day of attendance or after a temporary medical exemption is no longer valid, unless receipt within such time is inconsistent with the national immunization guidelines; or

(ii) When the immunizations are part of a series with recommended intervals between doses, each additional missing immunization must be received no later than (~~(thirty)~~) 30 calendar days past the recommended date of administration of the next dose as established by the national immunization guidelines.

(b) Failure to document proof of full immunization consistent with the schedule established in (a) of this subsection shall result in exclusion of a child from a school or a child care center as described in WAC 246-105-080.

(3) In maintaining child immunization records, schools and child care centers shall:

(a) Keep all department-approved forms described in WAC 246-105-050 for each enrolled child attending their school or child care.

(b) Keep or be able to produce within (~~(twenty-four)~~) 24 hours a current list of children who are not fully immunized. This list must be transmitted to the local health department upon request.

(c) Return the applicable department-approved CIS or COE or a legible copy of such documents to the parent if the child is withdrawn from a school or child care center or transferred from the school. A school or child care center may not withhold from the parent a child's department-approved CIS or COE for any reasons, including nonpayment of school or child care center fees.

(d) Provide access to immunization records to agents of the state or local health department of each child enrolled.

(4) In maintaining child immunization records, the chief administrator shall:

(a) Retain records for at least three years on a child who is excluded from school under this chapter. The record must include the child's name, address, and date of exclusion.

(b) Submit an immunization status report under RCW 28A.210.110 at a time and in a manner approved by the department. (~~The report must be submitted to the department by November 1 of each year. If a school opens after October 1, the report is due thirty calendar days from the first day of school.~~)