

WSR 21-09-079

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed April 20, 2021, 2:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-095.

Title of Rule and Other Identifying Information: WAC 246-10-109 and 246-11-080, the department of health (department) is proposing amending the procedural rules applicable to adjudicative proceedings conducted by the department and health professions boards and commissions in order to facilitate filing and serving documents. The department is proposing adding the option of electronic filing of documents with the department's adjudicative clerk's office (ACO) and electronic serving documents by the department to a party or a party's designated representative.

Hearing Location(s): On May 25, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of health (DOH) will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register at <https://attendee.gotowebinar.com/register/9105921519605707276>. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer mic and speakers (VoIP), United States +1 (415) 655-0052.

Date of Intended Adoption: May 25, 2021.

Submit Written Comments to: Tami Thompson, DOH, P.O. Box 47890, Olympia, WA 98504-7890, email <https://fortress.wa.gov/doh/policyreview>, by May 25, 2021.

Assistance for Persons with Disabilities: Contact Tami Thompson, phone 360-628-0096, TTY 711, email tami.thompson@doh.wa.gov, by May 18, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 246-10-109 and 246-11-080, procedural rules applicable to adjudicative proceedings conducted by the department and health professions boards and commissions. Chapter 246-10 WAC applies to all adjudicative proceedings conducted by the department. Chapter 246-11 WAC applies to adjudicative proceedings conducted by health professions boards and commissions having disciplining authority under the Uniform Disciplinary Act, chapter 18.130 RCW.

The proposed rules: (1) Will allow for the option of electronically filing documents with ACO. Electronic filing may be done via electronic mail or other secure electronic means as established by the department; (2) continue to allow for the option of hand delivering documents to ACO, however, the proposed rule excludes hand delivery of documents to the ACO when the office is closed during normal business hours due to exigent circumstances; (3) no longer require copies of documents being filed or served by fax to be mailed simultaneously with fax transmission of documents; (4) recognize that the parties may agree to electronic mail for service of documents between or among themselves, and provides that ACO will serve documents on the parties electronically when the parties agree to service via electronic mail or other secure electronic means as established by the department.

Reasons Supporting Proposal: In response to the coronavirus disease 2019 (COVID-19), the department took action to help prevent the

spread of COVID-19, by following social distancing practices and responding to the governor's proclamations. The department continues these efforts while vaccine distribution efforts are ongoing. The department filed several emergency rules to prohibit the hand-delivery of documents, and instead allowed for electronic filing.

Existing emergency rules, filed as WSR 21-08-007 on March 24, 2021, continue to prohibit hand delivery of documents to the ACO and personal service of documents on a party or a party's designated representative. The proposed rules are intended to replace the emergency rules. The proposed rules will allow for the department to determine when the office is safe to open, and the exigent circumstances are no longer in effect.

Statutory Authority for Adoption: RCW 43.70.040 and 34.05.220

(1) (a).

Statute Being Implemented: RCW 43.70.040 and 34.05.220 (1) (a).

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Tami Thompson, 101 Israel Road S.E., Tumwater, WA 98501, 360-628-0096; Implementation and Enforcement: Shellie Carpenter, 101 Israel Road S.E., Tumwater, WA 98501, 360-236-4674.

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 rule is exempt under RCW 34.05.328 (5) [(a)] (i). By definition the proposed rule is not a significant legislative rule, the proposed rule is by definition a procedural rule.

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 adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

April 19, 2021
Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

OTS-2993.1

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

WAC 246-10-109 Filing and service of documents. (1) For purposes of this section "documents" means pleadings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law or directed by the presiding officer, documents must be filed by:

(i) Hand delivery to the adjudicative clerk's office, except when the office is closed during normal business hours due to exigent circumstances;

(ii) First class, registered, or certified mail; ~~((or))~~

(iii) Fax transmission ~~((where copies are mailed simultaneously))~~;

(iv) Electronic mail sent to ACOfax@doh.wa.gov; or

(v) Other secure electronic means as established by the department.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) Personal service;

(ii) First class, registered, or certified mail; or

(iii) Fax transmission ~~((where copies are mailed simultaneously))~~.

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) Personally served;

(ii) Properly stamped, addressed, and deposited in the United States mail; or

(iii) ~~Successfully transmitted by fax ((and properly stamped and addressed copies are deposited in the United States mail))~~.

(d) A party may prove service by filing in compliance with this chapter any of the following:

(i) An acknowledgment of service; or

(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail or other secure electronic means as established by the department, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail or other secure electronic means as established by the

department in those cases in which all parties agree to electronic service.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-049, § 246-10-109, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-109, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-109, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-109, filed 6/3/93, effective 7/4/93.]

OTS-2994.1

AMENDATORY SECTION (Amending WSR 18-18-050, filed 8/29/18, effective 9/29/18)

WAC 246-11-080 Filing and service of documents. (1) For purposes of this section "document" means pleadings, briefs, exhibits, orders, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law or directed by the presiding officer, documents must be filed by:

(i) Hand delivery to the adjudicative clerk's office, except when the office is closed during normal business hours due to exigent circumstances;

(ii) First class, registered, or certified mail; ((~~or~~))

(iii) Fax transmission ((~~where copies are mailed simultaneously~~));

(iv) Electronic mail sent to ACOfax@doh.wa.gov; or

(v) Other secure electronic means as established by the department.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) Personal service;

(ii) First class, registered, or certified mail; or

(iii) Fax transmission ((~~where copies are mailed simultaneously~~)).

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) Personally served;

(ii) Properly stamped, addressed, and deposited in the United States mail; or

(iii) Successfully transmitted by fax (~~and properly stamped and addressed copies are deposited in the United States mail~~).

(d) A party may prove service by filing in compliance with this chapter any of the following:

(i) An acknowledgment of service; or

(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree with the adjudicative clerk's office to service of documents via electronic mail or other secure electronic means as established by the department, including notices of hearing, initial orders, and final orders.

(6) The adjudicative clerk's office will serve documents via electronic mail or other secure electronic means as established by the department in those cases in which all parties have agreed to electronic service.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-050, § 246-11-080, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-13-015, § 246-11-080, filed 6/6/97, effective 7/7/97. Statutory Authority: RCW 18.130.050(1) and 18.130.060(3). WSR 94-04-078, § 246-11-080, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 18.130.050(1). WSR 93-08-003 (Order 347), § 246-11-080, filed 3/24/93, effective 4/24/93.]