

WASHINGTON STATE BOARD OF HEALTH

Final Minutes of the State Board of Health

January 10, 2024

Hybrid Meeting

ASL (or CART) and Spanish interpretation available

Washington State Department of Health

111 Israel Road S.E., Tumwater, WA 98501

Building: Town Center 2, Rooms 166 & 167

Virtual meeting: ZOOM Webinar

State Board of Health members present:

Patty Hayes, RN, MSN, Chair

Kelly Oshiro, JD, Vice Chair

Stephen Kutz, BSN, MPH

Kate Dean, MPA

Socia Love-Thurman, MD

Mindy M. Flores, MBA-HCM

Dimyana Abdelmalek, MD, MPH

Paj Nandi, MPH

Tao Sheng Kwan-Gett, MD, MPH, Secretary's Designee

State Board of Health members absent:

Umair A. Shah, MD, MPH

State Board of Health staff present:

Michelle Davis, Executive Director

Melanie Hisaw, Executive Assistant

Michelle Larson, Communications

Manager

Anna Burns, Communications Consultant

Molly Dinardo, Health Policy Advisor

Andrew Kamali, Health Policy Advisor

Jo-Ann Huynh, Administrative Assistant

LinhPhụng Huỳnh, Council Manager

Lilia Lopez, Assistant Attorney General

Ashley Bell, Equity & Engagement

Manager

Hannah Haag, Community Engagement

Coordinator

Guests and other participants:

Kelly Cooper, Department of Health

Amy Ferris, Department of Health

Vicki Lowe, American Indian Health Commission

Jaime Bodden, Washington Association of Local Public Health Officials

David DeLong, Department of Health

Jeremy Simmons, Department of Health

Patty Hayes, Board Chair, called the public meeting to order at 8:36 a.m. and read from a prepared statement (on file).

1. APPROVAL OF AGENDA

Motion: Approve January 10, 2024, agenda.

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

2. ADOPTION OF NOVEMBER 8, 2023, MEETING MINUTES

Motion: Approve the November 8, 2023, minutes.

Motion/Second: Member Love-Thurman /Vice Chair Oshiro. Approved unanimously.

3. PUBLIC COMMENT

Patty Hayes, Board Chair opened the meeting for public comment and read from a prepared statement (on file).

Gerald Braude, Jefferson County, commented on the harm from the COVID-19 shots. G. Braude said there are 11 more deaths from COVID-19 shots since the last Board meeting in November, increasing from 222 to 233 deaths. G. Braude gave examples of people from ages 16 to 65 who died from arterial fibrillation and acute aortic dissection after receiving the COVID-19 shot.

Bill Osmunson, a dentist with a master's in public health, talked about the authority of the Board for dental regulations and the dangers of fluoride. B. Osmunson said the Environment Protection Agency National Toxicology Association states that fluoride lowers infant IQ. B. Osmunson talked about developmental neurotoxicity and mortality issues from fluoride in infants and children.

Natalie Chavez commented on the harm from the COVID-19 vaccine and asked for experimental vaccines to be put on hold until more research is done. N. Chavez gave several examples of people harmed and said that many have suffered physical, emotional, and financial devastation from the vaccine.

Lisa Templeton talked about concerns on certain legislative bills, including House Bill (HB) 2157. L. Templeton said there are already dozens of shots on the Centers for Disease Control (CDC) pediatric schedule and talked about the dangers and costs of vaccines.

4. BOARD ANNOUNCEMENTS AND OTHER BUSINESS

Michelle Davis, Board Executive Director welcomed Board Members. Executive Director Davis recognized new Board Member Paj Nandi and Ashley Bell the Board's new Equity and Engagement Manager. Executive Director Davis announced Shay Bauman, the Board's new Policy Advisor, would join the team on February 1.

Executive Director Davis described the materials in the packet. Executive Director Davis discussed the letter from the Office of Financial Management (OFM) acknowledging the Board's letter of support for the Environmental Justice Council's (EJC) recommendations related to school environmental justice. Executive Director Davis noted that the Governor's budget described additional funding through the Climate Commitment Act that reflects part of the EJC's recommendation.

Executive Director Davis shared additional information related to the Governor's budget, which was released in December. It maintained the budget proviso that suspends the Board's school environmental health and safety rules. The Governor's budget provided additional funding for schools:

- Capital, Sec 5007: \$20,000,000 (Climate Commitment Account) and \$20,000,000 (Common School Construction Fund) for Equitable Access to Clean Air and Improving Classroom Air Quality.

Executive Director Davis noted other investments for local school districts, these investments include:

- Capital Two-Year
 - School Construction Assistance Program (SCAP). Increase in the construction cost allocation from \$272/SF to \$350/SF for fiscal year (FY) 2025 – funds state matching grants for local school districts.
 - \$176,867,000 for the Small District and Tribal Compact Schools Modernization Program.
 - An additional \$8,100,000 for School District Health and Safety.
 - An additional \$1,500,000 for Healthy Kids-Healthy Schools competitive grant programs.

Executive Director Davis described the remaining materials in the Board packet (materials on file). Executive Director Davis thanked Member Dean for serving as the chair of the Environmental Health Subcommittee and Member Flores for sponsoring the 2024 State Health Report.

Executive Director Davis said the Health Impact Review (HIR) team recently completed two HIRs for Engrossed Substitute House Bill 1589 (Natural Gas) and 1859 (Long-Term Care Residents). Executive Director Davis said the HIR team has started receiving requests for the 2024 legislative session and is currently working on updates to HIRs completed in the 2023 legislative session. These HIRs include Senate House Bill 1368 (Zero-emission school buses) and Senate Bill 5002 (Alcohol concentration). Executive Director Davis reminded Board Members of the short completion deadline for HIRs and of the notification they will receive. Executive Director Davis asked Board Members to reach out with any recommended resources or connections.

Executive Director Davis thanked panelists for participating in the meeting.

Kate Dean, Board Member, asked for clarification on the Climate Commitment Act, and if it was earmarked for a particular use. Executive Director Davis said it pertains to indoor air quality, equitable access to clean air, and improving classroom air quality.

Member Dean asked about the \$20 million Common School Construction fund. Executive Director Davis offered to follow up on the types of schools eligible for those funds and the \$20 million is part of the Office of Superintendent and Public Instruction (OSPI) request.

Member Dean asked about Capital Gains. Executive Director Davis said there would be more conversations throughout the session. Executive Director Davis reminded the

Board that the budgets begin with the Governor's proposal, then the Senate and House negotiations before a final budget is reached.

Steve Kutz, Board Member, asked about the Governor's budget and schools. Executive Director Davis said the Governor's budget includes the suspension of the school and environmental health and safety rules, but the legislature has had several work sessions and focuses on school infrastructure.

5. 2024 LEGISLATIVE SESSION PREVIEW

Patty Hayes, Board Chair invited the Board's partners at the Department of Health (Department), the Washington State Association of Local Public Health Officials (WSALPHO), and the American Indian Health Commission (AIHC) to share their agency's priorities for the legislative session.

Kelly Cooper, Policy and Legislative Relations Director, Department of Health, shared the Department's legislative priorities. Kelly shared the Department's three pieces of agency request legislation, Senate Bill (SB) 5271 and House Bill (HB) 1434, SB 5982 and HB 2157, and SB 6095.

Amy Ferris, Chief Financial Officer, Department of Health, discussed the Department's budget priorities. Amy said the Department would be focusing on the healthcare workforce, especially for rural and behavioral health, the opioid epidemic, and emergency response management. Amy said the Department would also be supporting public health infrastructure, such as the 988 Suicide and Crisis Lifeline, and internal technology infrastructure supporting public health work.

Jaime Bodden, Managing Director, Washington Association of Local Public Health Officials (WSALPHO), gave a brief introduction of WSALPHO before discussing its priorities for the 2024 legislative session (presentation on file). Jaime said the agency has three policy focuses, SB 5982 and HB 2157, SB 6110, and SB 5983. Jaime then shared WSALPHO's budget priorities around on-site septic systems and school environmental justice.

Vicki Lowe, Executive Director, American Indian Health Commission (AIHC), introduced the AIHC. Vicki discussed AIHC's focus on the opioid and fentanyl epidemic in Indian Country and gave context about the first Washington State Tribal Opioid and Fentanyl Summit in May 2023. Vicki shared AIHC policy priorities, including HB 1877 and 2075. Vicki then spoke about AIHC's budget priorities. Vicki said these priorities are to establish a Tribal Opioid and Fentanyl Response Task Force and to establish Tribally operated facilities addressing opioid and fentanyl use. Vicki said the priorities also include bolstering education and prevention through developing the For Our Native Lives campaign, Tribal prevention models, and school-based prevention programming. Vicki said another priority is to streamline building a Tribally operated crisis stabilization and inpatient facility. Vicki said AIHC was also supporting several Tribal positions as well.

Chair Hayes transitioned the Board to the question-and-answer period.

Chair Hayes thanked Vicki for their presence at the meeting. Chair Hayes said the Board wishes to recognize AIHC's work. Chair Hayes said that the Board will discuss its 2024 Legislative Statement today, in which there are references of support to the AIHC's policy priorities. Chair Hayes also wanted to acknowledge Board Member Steve Kutz's work advising the 2024 Legislative Statement as well. Vicki thanked Chair Hayes for the comments.

Chair Hayes then addressed Jaime. Chair Hayes stated excitement for WSALPHO's work around syphilis treatment and asked Jaime to speak more about SB 5983 and its proposed amendments and funding sources. Jaime shared that the policy recommendation came from a 2022 STI/HPV workgroup which consisted of Department experts, local public health, reproductive healthcare partners, and providers. Jaime said that this group made several policy recommendations, some without budget impacts and that this was one of them. Jaime said this group targeted syphilis because of its significant health impact on adults and infants with congenital syphilis. Jaime said that this legislation sought to amend the revised code of Washington (RCW) regarding the licensing of medical assistants, to allow for the temporary authority to administer treatment under telehealth supervision. Jaime spoke about the need for this treatment pathway due to significant spikes in syphilis cases. Jaime said this legislation would create more efficient avenues for treatment and shared an example from a King County program that performs health outreach at encampments.

Chair Hayes then asked Amy to confirm whether funding for Foundational Public Health Services (FPHS) was maintained in the Governor's Supplemental Budget. Amy confirmed that this funding was maintained.

Kate Dean, Board Member, raised the topic of HB 2070 (integrating environmental justice considerations into certain project decisions). Member Dean said this bill tasks local health jurisdictions to create an environmental justice impact report for any projects associated with the State Environmental Policy Act (SEPA). Member Dean asked the speakers whether they knew about the feasibility of or funding availability for this component of the bill. Jaime said that WSALPHO would be contributing a fiscal note. Jaime said that the assessment components of the bill may be related to FPHS activities. Such as WSALPHO's climate change core group, in which local health jurisdictions and Department staff are working on building a climate and health program. Jaime said these FPHS activities may help mitigate the costs to local health jurisdictions. Jaime said that several local health jurisdictions are leaning into environmental justice work and spoke about Tacoma-Pierce County as an example. Kelly said that in the past, there have been attempts to add environmental health components to SEPA reviews and is glad the conversation is coming up again.

Member Dean asked whether there are efforts to clarify rules around local boards of health aside from HB 2090 and SB 5970 (modifying local board of health county commissioner membership). Member Dean said Jefferson County is still unable to get a Tribal representative on their Board and is concerned with non-compliance. Jaime added context around HB 2090 and SB 5970, which was brought by Thurston County Public Health. Jaime said that WSALPHO is currently gathering information about other needed rule changes, such as how the Public Health Advisory Board currently excludes some of the largest local health jurisdictions. Jaime said that currently, WSALPHO is not

bringing forth any edits but will likely do so in the future. Vicki noted to Member Dean that Clallam County is not out of compliance as the state can't direct Tribal Members to hold seats on local boards of health. Vicki spoke about a recent meeting with Candice Wilson, Tribal Policy Director at the Department, and established a goal of increasing Tribal representation on Local Boards of Health. Vicki hopes to see Tribes receiving funding for the first time to do public health through FPHS. Vicki said that as Tribal public health offices get staffed, hopefully, they will be able to fill empty seats on local boards of health.

Socia Love-Thurman, Board Member, was excited to hear about partners' work regarding behavioral health licensure. Member Love-Thurman spoke about the Seattle Indian Health Board's (SIHB) effort to open a treatment bed facility to address the opioid and fentanyl epidemic in Indian Country. Member Love-Thurman shared their clinic's daily encounters with this issue, such as having to administer CPR on the sidewalk outside of the clinic. Member Love-Thurman asked Vicki if there had been discussion about reimbursements for traditional medicine practitioners in their work at AIHC. Vicki said that this issue is often discussed. Vicki said that there are currently no specific bills regarding this topic. It is a continued topic of discussion with agencies and legislators, and the AIHC is currently focusing on Medicaid transformation with the Health Care Authority (HCA) to tackle this issue. Vicki said there was an effort to pass a compensated care State Plan Amendment in 2012 or 2013, but it didn't go through. Vicki noted that some Tribes are hesitant to participate in the reimbursement mechanism as they view it as capitalistic and culturally inappropriate. Vicki said that the second Washington State Tribal Opioid and Fentanyl Summit would be hosted in spring 2024, focusing on treatment and trauma-informed care. Member Kutz said that the reimbursement issue is at the federal level and that conversations at the state level have been supportive.

Member Love-Thurman asked Jaime whether Tribal Members are a part of childhood mortality review teams. Jaime said it depends on the circumstances. Jaime said that if a child comes from a Tribal or immigrant community, then a representative from that community is involved. Jaime said that the review team coordinator is tasked with identifying the proper participants.

6. WATER RECREATION PETITION WAC 246-260 UPDATE

Patty Hayes, Board Chair, said the Board had received a petition for rulemaking in 2023 relating to barrier latch height for recreation pool facilities (memo on file). Chair Hayes invited presenters to provide an update on how the petition has been incorporated in ongoing rulemaking for Chapter 246-260 Washington administrative code (WAC). Andrew Kamali, Board staff, and David DeLong, Department of Health, provided information on the underlying issue in the rule related to the petition request, actions taken by staff, and proposed rule language (presentation on file).

Chair Hayes asked presenters for a reminder of the timeline for revisions to Chapter 246-260 WAC. Andrew said it is tough to answer since two processes are happening concurrently: (1) agency request legislation to revise the revised code of Washington (RCW) and (2) rulemaking to update chapter 246-260 WAC. Andrew added that processes will likely continue through 2024 and possibly into Summer 2025.

Michelle Davis, Board Executive Director, asked if local health has worked with the specific facility referenced in the rule petition to address the immediate issue noted by the petitioner. David confirmed that this had happened and said the facility needed to install a latch with the original approved condition, which was a lower-height latch to be compliant with the Americans with Disabilities Act (ADA).

Kelly Oshiro, Vice Chair asked if the proposed rule language about latches operated using a key, electronic opener, or combination lock reflects requirements in the Model Aquatic Health Code (MAHC) and the ADA. David confirmed that the proposed rule language would be compliant with the ADA. For latch-height requirements under the MAHC, David said there is a distinction between doors and gates. Vice Chair Oshiro expressed gratitude for the staff's mindfulness. Vice Chair Oshiro said the Board wants to ensure accessibility, safety for children, and compliance with various codes affecting a water recreation facility. Stephen Kutz, Board Member asked whether staff intend to do rulemaking to address these issues in the rule. Andrew confirmed that these issues are being addressed in the ongoing rule making for chapter 246-260 WAC.

Paj Nandi, Board Member asked whether staff are inviting additional disability community partners and advocates to the rule making process, how participants are responding to the efforts, and how this rule making interacts with similar national efforts. David said that a specific constituency is outlined in the rule and staff have invited those groups as well as additional parties. David said rule making is a public process and staff are doing their due diligence to engage communities who may be impacted by changes.

Kate Dean, Board Member asked staff to speak about the rule's alignment with the international building code, which may have different language on the same issue. David said that the Washington State Building Code Council (SBCC) has the authority to develop rules affecting residential swimming pools and the International Swimming Pool and Spa Code applies to residential swimming pools in Washington. David said state law obligates the Board and Department of Health (Department) to look at the MAHC, so staff are modeling proposed rule (chapter 246-260 WAC) on this code. Andrew added that there is SBCC staff serving on the technical advisory committee for this rule making to provide information on how Board rules and SBCC rules interact.

Chair Hayes thanked presenters for the update.

7. 2024 STATE HEALTH REPORT

Patty Hayes, Board Chair, invited Member Flores to introduce the topic. Mindy Flores, Board Member, said Washington law requires the Board to submit a report to the Governor's Office every two years to identify public health priorities and legislative action for the following biennium. Member Flores said the Board's next State Health Report is due by July 2024 and outlined the purpose of the report and introduced staff to discuss the topic further.

Molly Dinardo and Hannah Haag, Board staff, spoke about the report planning and development process, including possible topic areas for the 2024 State Health Report (presentation on file). Molly said the development process will be like the process used

in 2022, it will be iterative and will incorporate more community engagement. Hannah shared the goal and plans for engaging communities. This includes remaining flexible on recommendation areas as the Board actively listens to communities' priorities and listening to voices from communities who are overburdened or disproportionately impacted by health inequities.

Chair Hayes thanked Member Flores for leadership on this project. Chair Hayes asked Jaime Bodden from the Washington Association of Local Public Health Officials (WSALPHO), who was sitting in the audience, to keep the Board's efforts in mind since some local communities have completed community health assessments, which could help inform the Board's report.

Dimyana Abdelmalek, Board Member, expressed gratitude for including community voices in the report development and excitement for the community storytelling panel scheduled for the March Board meeting. Member Abdelmalek offered to share community health assessments from their local jurisdiction.

Paj Nandi, Board Member expressed gratitude and noted the challenges of a short project timeline. Member Nandi asked how staff are prioritizing communities, given the Board's commitment to using an anti-racist lens, as well as their plan for coordinating with partners so as not to duplicate efforts. Hannah said staff have a plan on how to bring folks from overburdened communities into the process. Hannah said staff will engage partners who have an established relationship with the Board, and staff will ask partners whom else staff should speak with. Hannah added that staff are very open to hearing Board Members' ideas about specific groups, sectors, and methods.

Stephen Kutz, Board Member noted some challenges people face when trying to attend a public meeting, such as transportation, weather, and geographic location. Member Kutz asked how the Board can ensure engagement with people in Central and Eastern Washington and said it may take more than one meeting to do this. Molly affirmed Member Kutz's considerations and said staff want to set up a strong foundation for future Board processes and products.

Kelly Oshiro, Vice Chair said it is nice to see continuity between past State Health Report topics and the proposed 2024 topics. Vice Chair Oshiro said it may be beneficial to receive a briefing on the topic of pregnant person health and mortality prevention since it seems the Board is addressing this topic for the first time. Vice Chair Oshiro noted that it would be helpful as a Board Member to get an additional briefing on the accomplishments and achievements on topics the Board is carrying over from past reports.

Kate Dean, Board Member shared an interest in having robust community participation in report development. Member Dean reflected on experience serving on a local board of health and noted that the use of jargon and the creation of an echo chamber can happen when people work in silos. Member Dean said care should be given to how concepts are talked about in community settings, such as buying healthy food, various ways substance use disorder is spoken about, and recognizing that the ability to exercise is a privilege. Molly said the Governor's Office released an executive order on

plain talking, and staff will incorporate that order as well as Board Members' reminders in their efforts.

The Board took a break at 10:45 a.m. and reconvened at 10:55 a.m.

8. INDOOR AIR QUALITY PANEL

Patty Hayes, Board Chair, briefly introduced the topic and the panel. Chair Hayes said that the COVID-19 pandemic highlighted the importance of indoor air quality (IAQ) to reduce the spread of respiratory illness. Chair Hayes said that most exposure to illness happens indoors, as most people in the United States spend 90 percent of their time indoors. Chair Hayes said the Board needs a robust understanding to make decisions impacting people in the state.

Andrew Kamali, Board staff, described materials, discussed the structure of the panel, and shared a brief biography for each panelist (materials on file).

Eric Vander Mey, Delta E Consulting, gave a presentation about IAQ and mechanical heating, ventilation, and air conditioning (HVAC) system design impacts due to the COVID-19 pandemic. Eric also presented on recent changes to the Washington State Energy code, the Washington State Clean Buildings Act and Seattle Building Emissions Performance Standard, and sustainability standards (presentation on file).

Brandon Kemperman, Public Health - Seattle King County, gave a presentation on the importance of IAQ, lessons learned around IAQ in Washington from the COVID-19 pandemic, and topics of importance. Brandon also presented future needs around IAQ work and Public Health – Seattle & King County's IAQ programs (presentation on file).

Nancy Bernard, Department of Health, gave a presentation about the history of the Department of Health (Department) work in school environmental health and safety, its current work, and lessons learned from the COVID-19 pandemic. Nancy also summarized the Department's standards and guidance around ventilation (presentation on file).

Ben Omura, State Building Code Council, gave a presentation about the State Building Code Council (SBCC) and its work. Ben also presented on the 2021 code cycle, which will come into effect on March 15, 2024, and topics of concern for the 2024 code cycle (presentation on file).

Erin McTigue, Environmental Protection Agency Region 10, gave a presentation about the Environmental Protection Agency (EPA) role in indoor air work and its focus areas. Eric discussed issues around housing and health disparities, Tribal and rural communities, children's environmental health, climate change impacts, and infectious disease. Erin noted there are very few regulations related to indoor air quality which means that many of their programs are voluntary and that there are a few grant programs with funding available, including various new funds focused on Environmental Justice (presentation on file).

Chair Hayes transitioned into the discussion.

Stephen Kutz, Board Member asked what the ideal Merv filter is. Member Kutz said there was a lot of conversation about minimum standards, but we should look at ideal as well as minimum. Nancy answered that Merv 13 is ideal. Nancy said the Department tries to provide guidance above minimum standards, and there are some standards focused on the care of machines versus human impact. Member Kutz noted not hearing about the proper need to maintain the system and clarified that there is a difference between filter changes and maintenance. Nancy answered yes, funding for maintenance is always being cut, but if you don't maintain your systems, they won't work.

Michelle Davis, Board Executive Director asked if transient accommodations fall under Merv 13 and if this includes restaurants. Ben answered yes, typically those occupancy types fall under the same Merv 13 requirements, but there are some exceptions for very small systems.

Executive Director Davis asked as the building code adopts its new standards, do those apply just to new construction or to facilities that were constructed before the effective date. Ben answered typically, modifications to current buildings do trigger review and a need to meet current building codes.

Kate Dean, Board Member asked if residential cooking is a new component of the state building code. Ben answered that this is not a new section but adds to it, this new code differentiates space types.

Chair Hayes closed the panel with thanks to all the panelists and a reaffirmation that the Board is taking this issue very seriously.

The Board recessed for lunch at 12:40 p.m. and reconvened at 1:30 p.m.

9. RULES HEARING — ON-SITE SEWAGE SYSTEMS, CHAPTER 246-272 WAC

Kate Dean, Board Member provided a brief introduction to this agenda item. The introduction included the Board's rulemaking authority related to on-site sewage systems, the purpose of the Board's rules, and some background history on this rulemaking work. Member Dean then introduced the Board and Department of Health (Department) staff to provide an overview of the rule revision process, the proposed rule for consideration, and written public comments received on the proposed rule.

Andrew Kamali, Board staff, directed Board Members to the key materials for the hearing in their meeting packet and shared additional background information on the rulemaking. Andrew also introduced the information that would be presented in the presentation leading up to the public hearing and information about how the hearing would be conducted.

Jeremy Simmons, Department of Health, presented on the revision of Chapter 246-272A Washington Administrative Code (WAC). Jeremy started by summarizing the history of this rulemaking, followed by the 2017 rule review process and the changes

proposed based on this work. Jeremy then presented the public comments the Department received on the proposed rules and the adjustments that the Department plans to make based on the comments received to date. Jeremy concluded by providing information on the proposed implementation schedule for the proposed rules if the Board adopts the proposed amendments (see presentation on file).

Patty Hayes, Board Chair, thanked Department staff for their presentation and stated that the Board would open the rules hearing for Chapter 246-272A WAC. Chair Hayes read a statement to provide additional information and instructions for the hearing and then formally opened the hearing for public testimony. Each member of the public was given four minutes for their testimony. Testimonies were provided in person and via Zoom Webinar. Microphones were muted after the allotted time expired.

Eric Long gave testimony based on personal experience with on-site sewage systems (OSS) as a homeowner in Washington. E. Long expressed concern with the proposed rules, noting that the current rule only allows a certified professional, certified by the Department, to install, repair, and construct the design of an on-site sewage system. The current rules do not allow a person to make repairs to their own property. You must hire a licensed contractor, an architect, or another licensed professional, which can be very expensive. E. Long stated that this was wrong, and if a person can make their own repairs and meet the standard, the law allows you to do that, but the current code doesn't permit this. E. Long has requested estimates from different licensed professionals and has been quoted between \$100,000 and \$200,000 for repairs. E. Long stated that if a homeowner could make their own repairs, even following all the standards and meeting the inspection requirements, in comparison, it would cost more like \$15,000. E. Long compared this to an individual unable to file their own tax return because they weren't licensed as a tax professional. E. Long concluded by saying that with the current on-site rules, agencies are not serving the public.

Bill Dewey, Director of Public Affairs for Taylor Shellfish, spoke in support of the proposed rules. B. Dewey shared brief comments regarding the proposed rules to reinforce written comments they already submitted during the public comment period. B. Dewey emphasized how important addressing on-site sewage is for their company and the shellfish industry in Washington. Taylor Shellfish has over 14,000 acres of tidelands that they own or lease and farm in six different counties. As the Director of Public Affairs, B. Dewey's role has been dedicated to addressing water quality issues because it impacts Taylor Shellfish's ability to produce safe shellfish for the public. On-site sewage is one of the primary areas of concern. B. Dewey has been involved in prior on-site sewage system rule updates over the years for both residential and large on-site septic systems. B. Dewey commended Jeremy and Jeremy's staff for the process they follow for the on-site sewage rulemaking, stating that the team takes the time to hear and respond to everyone's comments and that it is a thorough process. B. Dewey concluded by urging Board Member adoption of the rule.

Michael Thomas spoke in opposition to the proposed rules based on their personal experience with on-site sewage systems as a homeowner in King County. M. Thomas expressed several concerns with the rule revisions, first related to per capita water use. From M. Thomas personal experience, they are using only 26 to 30 gallons per day per person. M. Thomas noted they could take more measures, like using a toilet that uses

1.0 gallons per flush or using water recycling technology in their shower like Orbital Systems. M. Thomas stated that this is a key parameter in on-site sewage design. M. Thomas says this propagates to the sizes of things like minimum tank size, field size, and all kinds of very expensive items that are needed for an OSS or even a revised OSS. M. Thomas also shared that they have a 30-year OSS that functions flawlessly. M. Thomas stated that the 45 gallons per capita per day referenced in the proposed rule is ancient and would appreciate it if the Board discussed the last time this requirement was revised. M. Thomas also expressed concern with guidance and clarity around the distance from public sewers, which is 200 feet, questioning the feasibility of this requirement. M. Thomas expressed another concern related to the reduction in minimum surface area in the rule, stating that this would increase the re-permitting costs if ever needed and additional inspection requirements. M. Thomas also stated support for the comments heard earlier in testimony related to the exorbitant costs of professional replacement, saying that well-informed and educated citizens should be able to make their own repairs.

Chair Hayes closed the public testimony portion of the rules hearing and asked if there was a motion and second from Board Members to begin questions and discussion.

Motion: The Board adopts the proposed amendments to chapter 246-272A WAC, On-Site Sewage Systems, as published in WSR 23-22-062 with the revisions agreed upon at today's meeting, if any, and directs staff to file a CR-103, Order of Adoption, and establish an effective date for the rules.

Motion/Second: Member Kutz/Member Kwan-Gett. Member Flores abstained. Approved unanimously.

Stephen Kutz, Board Member, asked staff to clarify if the rule requires every on-site system to have a plan for review and approval. Member Kutz noted in the Department's presentation, there was mention that the rule requires a review of plans every five years. Jeremy clarified that part of the presentation referred to local management plans that primarily help Puget Sound counties design their inspection programs and inventory septic systems. Jeremy stated that it doesn't refer to individual septic systems, these local management plans are only for counties. Jeremy said septic systems do not need to have plans for review and approval every five years.

Member Kutz inquired about the proposed changes to small lot sizes and whether pre-existing lots will be grandfathered in. Jeremy responded that the minimum lot size is 12,500, and the proposed rules increased that and other lot sizes by their respective soil types in a range of 500 to 1,000. Jeremy stated that for small lot sizes, the requirement changed from 12,500 to 13,000, and asked Member Kutz if this answered the question. Member Kutz confirmed that it did.

Member Kutz asked if all lots require reserved areas that remain unbuildable and unmodified. Jeremy said this was correct and that if a person is going to install a septic system on a new lot, this was a long-standing requirement in the rule. Jeremy clarified that an individual cannot build, subdivide, or pave this area.

Kelly Oshiro, Vice Chair inquired about the language in the definitions section of WAC 246-272A-0010, number 72, Puget Sound County, and where it says King County and Tacoma-Pierce whether the rule is referring to the City of Seattle or King County as a whole. Jeremy clarified that this language refers to the local health jurisdictions in these counties.

Vice Chair Oshiro noted that this was a bit unclear when reading the rule. Vice Chair Oshiro also commented that in future rulemaking staff should look at removing unnecessary use of acronyms and abbreviations to make the rule easier to read and simplifying language where possible.

Member Kutz asked staff to clarify rule requirements around on-site sewage self-installation, which the first public testifier spoke to during the hearing.

Jeremy shared that, in general, counties can allow owners to do installs on their own properties and that the public testimony was referencing the parts of the rule where it says resident owner and installations and design. Jeremy clarified that the state code says if you own a property and you live there, you can do that install and design, but local health jurisdictions often restrict that further and say not for proprietary products and not for repairs that are close to the shoreline. Jeremy said some local rules are stricter than the state rules.

Kate Dean, Board Member, commented that this is an important issue and that in rural counties like Jefferson County, most residents are on septic systems, and shellfish is their largest farm gate industry. Member Dean asked staff to remind Board Members about the requirements around inspections and whether homeowners can do inspections on some non-proprietary systems.

Jeremy confirmed that homeowners are allowed to do routine inspections. Jeremy also clarified that the proposed rules do not change anything related to routine inspections, which are required every three years for a gravity, low-technology system and every year for a higher-technology septic system, and these requirements have been in place since 2005. Jeremy noted that state rules, allow homeowners to do these inspections themselves, and many counties develop certification or approval processes for homeowners to complete inspections, but counties do not need to require homeowners to do their own inspections.

Member Dean commented on the issues that the first testifier, Eric Long, brought up. Member Dean said these rules are important for public health and environmental public health, but there's also an affordability question, and often a problem where these systems can become unaffordable and make homeownership out of reach for many people, especially in more rural counties. Member Dean stated that the challenge with these rules is that they need to strike a balance and noted appreciation for staff because they have worked with the public to try and find this balance of affordability and safety. Member Dean also inquired if during the rulemaking process if there was a discussion around incentivizing conservation, especially as it relates to water use and the per capita gallon use provision in the rule.

Jeremy said that this topic was briefly discussed during committee meetings. Jeremy noted that the public testifier who spoke about this issue had good points and that this requirement isn't necessarily current. Jeremy stated that, in general, the Department sizes septic systems based on numbers from the Environmental Protection Agency (EPA) and has been in an adaptive management mode for several years or decades based on these numbers. Jeremy noted that if the rules proposed smaller water use and drain fields, practitioners would say this isn't a good move because drain fields fail at a high rate, about 7 to 20%, depending on the location. Jeremy stated that proposing lower water use rates and drain fields could potentially lead to more failures, and the goal is to lower failure rates for these systems, and this is not where we should try to cut costs. Jeremy also shared that they are working on funding to help people with this infrastructure and that, largely, this issue stems from the U.S. wastewater system infrastructure. Jeremy concluded that as a society, we need to acknowledge this and try to figure out how to make sure things are functioning while also helping people pay for them without putting the total costs of these systems on individuals.

Member Dean added that good policy should incentivize behavior change. Member Dean stated that, for example, if a homeowner were to take their greywater treatment out of their septic system, there are permissible pathways to do that, but it's extremely expensive, and there wouldn't be cost savings. Member Dean said if we always default to the larger, more expensive system, that doesn't necessarily bring about the types of change that we need for overall societal benefits. Member Dean concluded that the Board wouldn't be able to solve this problem today but wanted to raise this issue in the discussion. Member Dean also asked about privies, whether counties still allow them, and if privies are addressed in this rule or perhaps another rule.

Jeremy clarified that privies and other technologies, like composting toilets, are captured in their recommended standards and guidance document.

10. EMERGENCY RULEMAKING — ON-SITE SEWAGE SYSTEMS, WAC 246-272A-0110, PROPRIETARY TREATMENT PRODUCTS AND SUPPLY CHAIN SHORTAGES

Tao Sheng Kwan-Gett, Secretary's Designee, introduced the item. Regardless of today's action of the on-site sewage system (OSS) rules hearing, the following matter requires separate action to maintain continuity of the rule. The fifth emergency rule is set to expire on February 3, 2024. The Department of Health (Department) is requesting a sixth emergency rule to prevent a break in this emergency rule before the completion of the permanent rulemaking. Andrew Kamali, Board Staff, provided additional background on this rule and referred to the meeting materials for more information (materials on file). Andrew introduced Jeremy Simmons, Department of Health, to briefly explain the Department's request.

Patty Hayes, Board Chair, made note of Jeremy doing a stellar job of providing multiple briefings on this rule before. Chair Hayes asked whether Board Members need a briefing or if the Board is ready to make a motion.

Motion: The Board adopts the proposed amendments to chapter 246-272A WAC, On-Site Sewage Systems, as published in WSR 23-22-062 with the revisions agreed upon at today's meeting, if any, and directs staff to file a CR-103, Order of Adoption, and establish an effective date for the rules.

Motion/Second: Member Kwan-Gett/Member Dean. Approved unanimously.

Steve Kutz, Board Member asked whether progress was being made on addressing supply chain issues. Chair Hayes stated the rule that was just passed should take care of these issues, and asked Jeremy to confirm. Jeremy confirmed that this is correct.

The Board took a break at 2:43 p.m. and reconvened at 3:00 p.m.

11. PETITION FOR RULEMAKING FOR CHAPTER 246-760 WAC, VISUAL SCREENING STANDARDS – SCHOOL DISTRICTS

Socia Love-Thurman, Board Member, summarized the Board's petition for rulemaking process, and the statutory requirements the Board must follow when a petition is received. Member Love-Thurman stated that in November, the Board received a petition for rulemaking to amend its school vision screening standards to add screening for color vision deficiency (CVD), also known as color blindness (materials on file).

Molly Dinardo, Board staff, introduced two subject matter experts in school vision screening standards. The first person is Dr. Bruce Moore, New England College of Optometry, National Center for Children Vision and Eye Health. The second is Annie Hetzel, Office of Superintendent Public Instruction. Molly provided more information on the petition and CVD, an overview of the National Childhood Vision Screening guidelines, and the Board's options for responding to the petition (materials on file).

Patty Hayes, Board Chair, opened the topic for further discussion.

Steve Kutz, Board Member, inquired about the rationale for periodic screening for color vision deficiency at prescribed intervals, as you're either born with color vision deficiency or not. Dr. Moore responded that Member Kutz was correct, and in almost all cases, it is a genetic condition, with only some rare diseases affecting color vision over time. Dr. Moore also added several comments in addition to the presentation from staff. Dr. Moore shared that they have color vision deficiency, and it wasn't until they had to take Organic Chemistry at University that it became an issue. Dr. Moore also provided more details on why color vision deficiency screening in schools isn't recommended, including that if schools do not have a precise, correct, and expensive light source, they cannot conduct accurate and reliable testing. Dr. Moore also noted that the color plates are expensive and sensitive. If fingerprints get on the plates, the accuracy of the test can be destroyed. Dr. Moore concluded that implementing this screening in all school buildings across all districts wouldn't be feasible and that color vision deficiency isn't as big of a problem as people without the condition think it is.

Paj Nandi, Board Member, thanked Molly for the strong background and context, and Dr. Moore for the additional comments. Member Nandi asked what we know about the states currently testing for color vision deficiency and the costs of screening. Molly

responded that some states have color vision deficiency screening as a requirement in their state law, while others are doing targeted screening in kindergarten or screening by referral from teachers to the school nurses. Molly stated that it varies, and they would need to follow up with additional information and invited Dr. Moore and Annie to chime in if they had more insight to share.

Dr. Moore added that if you do not have the precise light source or the precision of plates, screening results will be off, which is a particular issue in a school setting. Dr. Moore stated that in school screening programs, there are a lot of people handling the plates and tests, which can leave more room for error. Dr. Moore said the bottom line is that testing for color vision deficiency should be done at an eye doctor's office with proper materials and equipment, and there is little value in doing it statewide through mass screening. Molly stated that there are research documents that outline which states conduct testing for color vision deficiency and can forward these materials to Member Nandi.

Tao Kwan-Gett, Board Member, thanked Molly and the subject matter experts for their presentation. Member Kwan-Gett inquired about the administrative and personnel burden of adding this testing and whether the type of color vision deficiency that is caused by certain eye conditions can be modified by early detection of color vision deficiency. Annie asked to respond to some of the topics previously discussed. Annie commented on the challenge of tracking students that have been tested, and said it is very difficult, logistically, during annual school screenings to know who has been screened for color vision or any other kind of vision screening. Regarding the administrative burden, Annie stated that not all schools have vision and hearing screening equipment on site, and many school nurses need to be able to pack up the equipment and travel with it from school to school. Annie also mentioned that recent changes to the vision screening rules five or six years ago increased the time that students are out of class for vision screenings, and several school nurses have experienced pushback from school administrators who are upset about students missing out on educational time. Annie concluded that adding another test would complicate this further and would put school nurses in a challenging position.

Kate Dean, Board Member, stated that Member Kwan-Gett's second question wasn't answered. Member Kwan-Gett repeated the question of whether early detection of conditions can be modified by testing for color vision deficiency. Dr. Moore answered no, not really. Dr. Moore said that an individual who has an ocular disease condition with color vision defects as a component is almost always going to have more significant visual acuity deficits that would become apparent or picked up on a screener. Dr. Moore added that there is nothing specific about color vision deficiency testing that would improve the ability to detect other eye conditions at an earlier time.

Motion: The Board declines the petition for rulemaking to revise applicable sections of chapter 246-760 WAC to include screening for color vision deficiency in the Washington State school vision screening standards and procedures under RCW 28A.210.020 for the reasons articulated by Board Members. The Board directs staff to notify the petitioner of the Board's decision.

Motion/Second: Member Kutz/Member Nandi: Approved unanimously.

Member Love-Thurman thanked the subject matter experts and Molly for their time. Member Love-Thurman said that given the high prevalence of color vision deficiency in boys, it sounds like we need to adapt school teaching materials and classrooms to better suit folks, knowing that there are mostly boys out there who don't see red and green very well.

Kate Dean, Board Member thanked the petitioner and their efforts. Member Dean stated that if implementing this test didn't come with so many challenges, then it would have maybe been a good idea. Member Dean added that they hope there is more of an effort to identify kids with color vision deficiency.

12. 2024 LEGISLATIVE STATEMENT

Michelle Davis, Board Executive Director, reminded Board Members that she had shared the 2023 Legislative Statement at the November Board meeting, and directed members to an updated 2024 draft for their consideration.

Executive Director Davis said the legislative document is intended to guide staff during the 2024 legislative session. Executive Director Davis said during legislative sessions, Board staff identify, review, and analyze bills that align with the Board's legislative statement. Executive Director Davis shared that the team may just monitor a bill's progress through the legislative session or submit written comments to the sponsor or a committee in support of or against the legislation, or may provide testimony at hearings on behalf of the Board. Board staff often suggest technical changes to improve legislation. Executive Director Davis shared the draft and asked the Board to help take action to finalize the statement (materials on file).

Paj Nandi, Board Member asked if the Board previously adopted a statement of racism as a public health crisis. Executive Director Davis replied yes. Member Nandi asked if there's a way to recognize the Board standing behind that statement, saying this aligns with Chair Hayes's recommendation that the crisis was a call to action around the pandemic and that the work is not done.

Patty Hayes, Board Chair concurred with Member Nandi, saying the intent was to make the statement stronger by calling it out and making it clear.

Steve Kutz, Board Member, said any stresses in the system exacerbate the problem.

Executive Director Davis talked about the data desegregation change, saying we added the national academies' recommendation and clarified data collection. Member Oshiro's suggestion included desegregation for policymakers for better informed decisions regarding disparities in communities.

Executive Director Davis described additional updates, including maternal mortality, newborn screening, Health Impact Reviews (HIR), school environment and safety, shellfish sanitation, drinking water, oral health, opioids, mental health, and other Board work.

Member Kutz said this is an incredible amount of work between meetings. Executive Director Davis complimented the Board staff.

Motion: The Board adopts the Statement of Policy on the 2024 Legislative Issues as discussed on January 10, 2024, including Board Member Nandi's suggestion to make strong and clear the piece on racism as a public health crisis.

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

13. SNOHOMISH COUNTY HEALTH DEPARTMENT COMPLAINT

Kelly Oshiro, Vice Chair, introduced the complaint filed on November 28, 2023, against the Snohomish County Health Department (SCHD) Director and Local Health Officer. Vice Chair Oshiro provided background on the Board's authority related to complaints against local health officials and stated that Washington law allows anyone to file a complaint and that Board authority allows the Board to authorize an investigation if the complaint is warranted. Vice Chair Oshiro provided some additional details on the complaint and asked if there were any Board Members who needed to recuse themselves from this discussion.

Patty Hayes, Board Chair, stated they were turning the gavel over to Vice Chair Oshiro and would be recusing themselves from this discussion. Paj Nandi, Board Member, also recused herself.

Vice Chair Oshiro had the Board Members who recused themselves step away from the discussion table.

Molly Dinardo, Board staff provided additional information on the complaint and directed Board Members to the materials for this agenda item. Molly mentioned that Snohomish County provided a response to the initial complaint and that per the Board's policy for responding to complaints, the Board sends a copy of the complaint to the subject local health officials, and they are permitted to respond if they choose to. Molly then outlined the Board's options for possible action on the complaint.

Vice Chair Oshiro opened the discussion and asked if a Board Member wanted to make a motion before the discussion.

Steve Kutz, Board Member, said before making a motion, they wanted to acknowledge that health officers have had an incredibly hard book of business in Washington during the pandemic. Member Kutz stated that many health officers have been pulled in multiple directions during the pandemic, but the pandemic has been declared as over.

Vice Chair Oshiro agreed and stated Governor Inslee has rescinded all emergency orders, so there are not currently any masking guidelines statewide, except for certain facilities.

Member Kutz added that this guidance is recommended for people to follow, but they are not required.

Kate Dean, Board Member, made a motion.

Motion: The Board determines that the complaint does not merit an investigation because, for the reasons articulated by the Board, it does not indicate a possible violation of public health law and that the Board directs staff to notify the complainant of the Board's decision.

Motion/Second: Member Dean/Member Kutz. Approved unanimously

Vice Chair Oshiro asked if there were any further comments or discussions.

Dimyana Abdelmalek, Board Member, said they wanted to echo what has already been shared, and that at this point, masking is largely voluntary.

Tao Kwan-Gett, Secretary's Designee, added that Board Members were correct in saying that there are no current statewide requirements for masking. Member Kwan-Gett said that state guidance is aligned with guidance from the Centers for Disease Control (CDC), and guidance cannot be enforced. Member Kwan-Gett shared that the Board needs to consider these complaints when they are submitted because it is possible there could be situations where local health officials are not serving the needs of their community. Member Kwan-Gett said that in this case, if there is a standard of practice for public health, the health officer and administrator in Snohomish County exceed that standard. Member Kwan-Gett agreed with the motion that this complaint should be denied as it does not merit an investigation.

Member Kutz commented on the complainant's request for mandatory isolation and quarantine. Member Kutz said during the pandemic, in the United States, mandatory or enforced quarantine did not occur, only recommendations for people to voluntarily quarantine themselves.

Mindy Flores, Board Member, stated they could not determine where there was substantial evidence that a violation occurred and agreed with Member Kwan-Gett that none of these complaints should be taken lightly.

Chair Hayes and Member Nandi returned.

14. BOARD MEMBER COMMENTS

Tao Kwan-Gett, Secretary's Designee, said a media release went out today that the Department of Health (Department) will supply naloxone to schools that want it. Member Kwan-Gett shared this was done in collaboration with the Office of Superintendent Public Instruction (OSPI) and is meaningful and potentially lifesaving. Member Kwan-Gett said hopefully no school will use it, but they will have it if they need it, and this shows how seriously we take it.

Stephen Kutz, Board Member, said it appears that the federal government is looking again at the issue around Kratom and asked Board staff to research. Member Kutz said the items are coming into the United States without knowledge of ingredients and people are dying from using them.

Michelle Davis, Board Executive Director, recommends having the April 10 Board meeting in Eastern Washington, based Board Member requests to hear from the community regarding the State Health Report. Executive Director Davis said the March meeting is packed and that an April 10 meeting will give staff additional time to engage with the community in the process.

Patty Hayes, Board Chair thanked the staff and Board Members for a full meeting.

ADJOURNMENT

Patty Hayes, Board Chair, adjourned the meeting at 3:59 p.m.

WASHINGTON STATE BOARD OF HEALTH

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PO Box 47990 • Olympia, Washington • 98504-7990
360-236-4110 • wsboh@sboh.wa.gov • sboh.wa.gov