

## Chapter 246-08 WAC PRACTICE AND PROCEDURE

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### WAC

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246-08-001 Application of chapter 246-08 WAC. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-001, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-001, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-410, filed 2/28/90, effective 3/1/90; Regulation 08.410, effective 3/11/60.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-020 Application for an adjudicative proceeding. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-020, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-020, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-413, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-030 Administrative law judge—Authority—Application of law—Assignment—Disqualification. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-030, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-030, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-425, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-040 Representation. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-040, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-428, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-050 Prehearing conference. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-050, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-431, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-060 Notice of hearing. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-060, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-434, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-070 Filing and service of papers. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-070, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-070, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-437, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-080 Vacating an order of dismissal for reason of default or withdrawal. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-080, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-080, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-440, filed 2/28/90, effective 3/1/90; Regulation 08.440, effective 3/11/60.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-090 Subpoenas. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-090, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-446, filed 2/28/90, effective 3/1/90.] Repealed by WSR

93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-100 Teleconference hearing. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-100, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-100, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-449, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-104 Petition for rule making—Form, content, and filing. [Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-08-104, filed 6/3/93, effective 7/4/93.] Repealed by WSR 96-19-041, filed 9/12/96, effective 10/13/96. Statutory Authority: RCW 43.70.040.

246-08-105 Petition for rule making—Consideration and disposition. [Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-08-105, filed 6/3/93, effective 7/4/93.] Repealed by WSR 96-19-041, filed 9/12/96, effective 10/13/96. Statutory Authority: RCW 43.70.040.

246-08-110 Rules of evidence. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-110, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-452, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-120 Contents of orders. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-120, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-461, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-130 Petition for review—Response to petition—Disqualification of review judge. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-130, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-130, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-464, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-140 Reconsideration. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-140, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-140, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-470, filed 2/28/90, effective 3/1/90; Regulation 08.470, effective 3/11/60.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-150 Adjudicative proceedings—Notice to limited-English-speaking parties. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-150, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-515, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-160 Interpreters. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-160, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-525, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-170 Group hearing. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-170, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-535, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-180 Continuance. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-180, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-545, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-190 Computation of time. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-190, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-565, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-200 Judicial review of final adjudicative order. [Statutory Authority: RCW 34.05.220. WSR 92-02-018 (Order 224), § 246-08-200, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-200, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-08-575, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-210 Variances, waivers, and exemptions. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-210, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 34.05 RCW. WSR 90-01-134 (Order 016), § 248-08-596, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 43.20.050. WSR 85-15-063 (Order 289), § 248-08-596, filed 7/18/85; WSR 84-16-031 (Order 272), § 248-08-596, filed 7/25/84. Formerly WAC 248-08-595.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

246-08-320 Delegation of authority by secretary. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-320, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-320-340, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

tive 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

- 246-08-330 Declaratory orders—Forms, content, and filing. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-330, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-320-350, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.
- 246-08-340 Declaratory orders—Procedural rights of persons in relation to petition. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-340, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-320-360, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.
- 246-08-350 Declaratory orders—Disposition of petition. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-350, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-320-370, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.
- 246-08-360 Petition for rule making—Form, content, and filing. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-360, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-320-400, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.
- 246-08-370 Petition for rule making—Consideration and disposition. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-370, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-320-410, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.
- 246-08-380 Updating mailing lists. [Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-380, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 34.05.220. WSR 90-06-018 (Order 038), § 248-320-500, filed 2/28/90, effective 3/1/90.] Repealed by WSR 93-13-005 (Order 369), filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 43.70.040.

## ADJUDICATIVE PROCEEDINGS

### **WAC 246-08-101 Declaratory orders—Format, content, and filing.**

Any person may petition the department for a declaratory order, under RCW 34.05.240 with respect to the applicability of a particular circumstance of a rule, order, statute enforced by the agency. A petition for a declaratory order shall generally adhere to the following format:

(1) At the top of the page shall appear the wording "Before the Washington State Department of Health." On the left side of the page below the following caption shall be set out: "In the matter of the petition of (name of petitioning party to be inserted) for a declaratory order." Opposite the caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the statement of facts similar in form to applicable complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the request of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies shall be filed with the Department of Health, Adjudicative Service Unit, P.O. Box 47879, Olympia, WA 98504-7879. Petitions shall be on white paper, 8 1/2" x 11" in size.

[Statutory Authority: RCW 43.70.040, 43.70.050, 34.05.220, 42.17.250, 70.02.005. WSR 06-11-056, § 246-08-101, filed 5/11/06, effective

6/11/06. Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-08-101, filed 6/3/93, effective 7/4/93.]

**WAC 246-08-102 Declaratory orders—Procedural rights of persons in relation to petition.** Within fifteen days after receiving a petition for a declaratory order, the department shall notify all interested persons as required by chapter 34.05 RCW about the petition and any other person it considers necessary. If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the department shall give at least seven days advance written notice of the proceedings to the petitioner and all interested persons required by law and any other person it considers necessary. The notice must contain the time, date, place, and nature of the proceedings and shall describe how interested persons may participate in the proceeding.

[Statutory Authority: RCW 43.70.040, 43.70.050, 34.05.220, 42.17.250, 70.02.005. WSR 06-11-056, § 246-08-102, filed 5/11/06, effective 6/11/06. Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-08-102, filed 6/3/93, effective 7/4/93.]

**WAC 246-08-103 Declaratory orders—Disposition of petition.** A declaratory order entered by the department or a decision declining to enter a declaratory order shall be in writing and shall be served upon the petitioner and all other persons described under RCW 34.05.240(3).

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-08-103, filed 6/3/93, effective 7/4/93.]

**WAC 246-08-106 Updating mailing lists.** (1) Periodically, the department may cause the following notice, or a notice substantially similar, to be mailed: "In order to maintain as current a mailing list as possible, and to eliminate mailing notices to those who no longer have need for such notices, the department will discontinue use of its old mailing lists, effective (date to be specified). If you wish to continue receiving copies of notices of intention to adopt, amend, or repeal rules after that date, please fill out the attached form and return it to the department at the address indicated on the form. If you do not return the form indicating your desire to continue to receive notices to adopt, amend, or repeal rules, your name or the names of your organization will be removed from the mailing lists."

(2) The notice regarding updating of mailing lists is to be mailed by first-class mail.

(3) The form to be filled out by those persons or organizations wishing to continue to receive department notices to adopt, amend, or repeal rules shall specify interest areas covered by these notices, thereby enabling those on mailing lists to limit correspondence received.

[Statutory Authority: RCW 43.70.040. WSR 93-13-005 (Order 369), § 246-08-106, filed 6/3/93, effective 7/4/93.]

## ADMINISTRATIVE PROCEDURES

**WAC 246-08-390 Acquisition, security, retention, disclosure and destruction of health information.** This section establishes how the department acquires, secures, retains, discloses, and destroys health care information under chapter 70.02 RCW and health-related data under RCW 43.70.050.

(1) The department of health (department) is the single department in state government with the primary responsibilities for the preservation of public health, monitoring health care costs, the maintenance of minimal standards for quality in health care delivery, and the general oversight and planning for all the state's activities as they relate to the health of its citizenry. In this capacity, the department regularly obtains individually identifiable health care information and health-related data necessary for the department to carry out public health activities.

(2) For the purposes of this section "health information" means "health care information" as defined in chapter 70.02 RCW and "health-related data" as described in RCW 43.70.050.

(3) Acquisition.

(a) The department may obtain health information as authorized by state and federal law.

(b) The department will identify its statutory authority to obtain health information when the department makes a request for health information.

(c) The department will identify its statutory authority to obtain and to disclose health information when entering into a data sharing agreement.

(4) Privacy and security.

(a) The department protects the privacy of individuals and secures health information consistent with state and federal law and applicable information security standards and guidelines set by the National Institute of Standards and Technologies (NIST).

(b) The department shall appoint a chief information security officer and a privacy officer with delegated agency wide authority to protect the availability, integrity, confidentiality, and privacy of all health information acquired by the department.

(c) Managers of any programs within the department that receive health information act as the primary data steward and assure health information is protected consistent with applicable law and agency privacy, confidentiality and security policies, standards, and practices.

(d) The department will notify a person whose health information is disclosed in violation of state or federal law. The department will make a notification as soon as practicable pursuant to the department's confidential information policy and procedure.

(5) Retention. The department will retain health information in accordance with the department's records retention schedules.

(6) Public inspection and copying.

(a) Chapters 70.02 and 42.56 RCW apply to the public inspection and copying of health information.

(i) Health information that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care is not available for public inspection and copy-

ing. Health information that is not individually identifiable is described as "deidentified."

(ii) "Deidentified" has the same meaning as defined in chapter 70.02 RCW.

(iii) The department may consider analogous federal standards for deidentification of protected health information when determining if deidentification of health information is possible.

(b) Permitted disclosures of information and records related to sexually transmitted diseases and information and records related to mental health services are found in chapter 70.02 RCW.

(c) RCW 43.70.050(2) and chapter 42.56 RCW apply to the public inspection and copying of health information as described in RCW 43.70.050(2).

(i) Health information in any form where the patient or provider of health care can be identified shall not be disclosed.

(ii) The department's use of health information shall be in accordance with state and federal confidentiality laws.

(7) Sharing identifiable health information with public health partners.

The department may disclose identifiable health information, including information and records related to sexually transmitted diseases and information and records related to mental health services, for public health purposes as described in chapter 70.02 RCW or as otherwise permitted by law.

(8) Health information received by the department that the department has not requested and is not authorized to receive.

As required by RCW 70.02.290, the department will not make health information the department has not requested and the department is not authorized to receive available for public inspection and copying. The department will destroy such health care information or the department may securely return such health information to the sender if the sender is a health care facility or health care provider subject to chapter 70.02 RCW.

(9) Destruction.

The department shall destroy health information in a manner that reduces it to an illegible condition. Destruction shall take place as soon as practicable after the approved records retention period ends.

[Statutory Authority: RCW 70.02.290. WSR 17-08-014, § 246-08-390, filed 3/27/17, effective 4/27/17. Statutory Authority: RCW 70.02.050(3). WSR 92-07-080 (Order 253), § 246-08-390, filed 3/17/92, effective 4/17/92.]

**WAC 246-08-395 Mailing lists and current address required.** The department will update its mailing lists periodically. Any person may request to be added or removed from the department's mailing lists. It is the responsibility of the licensee, applicant for licensure, and person who receives or applies for benefits administered by the department, to keep the department informed of a current mailing address.

(1) Licensees, applicants for licensure, and persons who receive or apply for benefits administered by the department must provide the department with a current mailing address when submitting new applications or renewal applications with the department.

(2) Licensees, applicants for licensure, and persons who receive or apply for benefits are responsible for notifying the appropriate

department programs, in writing, of any address changes. The department will accept written notice through email, fax, or by regular mail.

(3) The department will use the most recent mailing address provided by the licensee, applicant, or persons who receive or apply for benefits for all official correspondence.

(4) For the purpose of this section, "licensee" means a person holding a license, permit, certification, approval, registration, charter, or similar form of authorization required by law and granted by the department.

[Statutory Authority: RCW 43.70.040, 43.70.050, 34.05.220, 42.17.250, 70.02.005. WSR 06-11-056, § 246-08-395, filed 5/11/06, effective 6/11/06.]

## POLICIES

**WAC 246-08-400 Health care providers charging for searching and duplicating health care records.** A health care provider may charge a reasonable fee as defined in RCW 70.02.010 for searching and duplicating health care records. In accordance with RCW 70.02.010 the fees a provider may charge cannot exceed the fees listed below:

(1) Copying charge per page:

(a) No more than one dollar and twenty-four cents per page for the first thirty pages;

(b) No more than ninety-four cents per page for all other pages.

(2) Additional charges:

(a) The provider can charge a twenty-eight dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.

(3) HIPAA covered entities as defined in 45 C.F.R. Sec. 103 may not charge fees or costs that are not authorized by, or are prohibited by, Federal HIPAA regulation 45 C.F.R. Sec. 164.

[Statutory Authority: RCW 43.70.040 and 70.02.010. WSR 21-11-087, § 246-08-400, filed 5/18/21, effective 6/18/21. Statutory Authority: RCW 70.02.010(38) and 43.70.040. WSR 20-10-025, § 246-08-400, filed 4/27/20, effective 5/28/20. Statutory Authority: RCW 70.02.010(37) and 43.70.040. WSR 17-17-019, § 246-08-400, filed 8/7/17, effective 9/7/17; WSR 15-14-073, § 246-08-400, filed 6/26/15, effective 7/27/15. Statutory Authority: RCW 70.02.010(15) and 43.70.040. WSR 13-14-092, § 246-08-400, filed 7/1/13, effective 8/1/13; WSR 11-12-027, § 246-08-400, filed 5/24/11, effective 7/1/11; WSR 09-13-102, § 246-08-400, filed 6/17/09, effective 7/1/09; WSR 07-12-029, § 246-08-400, filed 5/30/07, effective 7/1/07. Statutory Authority: RCW 70.02.010(14) and 43.70.040. WSR 06-11-166, § 246-08-400, filed 5/24/06, effective 6/24/06. Statutory Authority: RCW 70.02.010(12) and 43.70.040. WSR 05-12-013, § 246-08-400, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 70.02.010(12), 43-70-040 [43.70.040] and 70.02.900. WSR 03-14-036, § 246-08-400, filed 6/23/03, effective 7/24/03. Statutory Authority: RCW 70.02.010 and 43.70.040. WSR 01-16-009, § 246-08-400, filed 7/19/01, effective 8/19/01; WSR 99-13-083, § 246-08-400, filed 6/14/99, effective 7/15/99. Statutory

Authority: RCW 70.02.010(12) and 43.70.040. WSR 97-12-087, § 246-08-400, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 43.70.040 and 70.02.101(12). WSR 95-20-080, § 246-08-400, filed 10/4/95, effective 11/4/95.]

**WAC 246-08-420 Public records—Access and exemptions.** (1) The department shall, upon request, make public records available for inspection and copying, during the department's normal business hours.

(2) The location of specific public records may be obtained by contacting the program where the records are maintained or the appointed public records disclosure designee.

(3) Requests to inspect or receive copies of public records must include:

(a) A description of the requested record or records;

(b) An indication whether the requestor wishes to inspect or receive a copy of the requested records;

(c) An address or other means through which the department may communicate with the requestor to clarify the request, provide information on copying charges and collect payment, and arrange for inspection or mailing of copies of the requested record or records; and

(d) If a list of names of individuals is being requested, an explanation of the purpose for which the request is made, consistent with RCW 42.17.260(9).

(4) The department shall not charge a fee for the inspection of public records, however the department may charge for reimbursement of the costs incurred by providing copies.

(5) The department will determine the extent to which a public record is exempt from public disclosure under chapter 42.17 RCW or other statutes.

(6) The department, when denying a request for a public record in whole or in part, shall provide a statement of the specific statutory exemption that authorizes the withholding of the record or information and a brief explanation of how the exemption applies to the record or information withheld.

(7) If the department denies a record, in whole or in part, the requestor may seek review of the decision by sending a written request for review to the Agency Public Records Disclosure Officer, P.O. Box 47890, Olympia, WA 98504-7890.

[Statutory Authority: RCW 43.70.040, 43.70.050, 34.05.220, 42.17.250, 70.02.005. WSR 06-11-056, § 246-08-420, filed 5/11/06, effective 6/11/06. Statutory Authority: RCW 43.70.050. WSR 93-08-004 (Order 346), § 246-08-420, filed 3/24/93, effective 4/24/93.]

**WAC 246-08-440 Protection of public records.** Access to the record storage areas shall be restricted to insure that essential functions of the agency are carried out and public records are not damaged, altered, disorganized, or lost. Inspection shall be in the presence of an authorized department employee. Inspection shall be denied and the records withdrawn if the individual inspecting the records is doing so in a manner likely to damage, alter, or substantially disorganize them; or attempts to remove them from the prescribed location; or is excessively interfering or will unduly interfere with other essential functions of the department.

[Statutory Authority: RCW 43.70.050. WSR 93-08-004 (Order 346), § 246-08-440, filed 3/24/93, effective 4/24/93.]

**WAC 246-08-450 Final orders, declaratory orders, interpretive statements and policy statements—Indexes.** (1) In accordance with RCW 42.17.260, the department shall index:

(a) Final orders that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and contain an analysis or decision of substantial importance to the department in carrying out its duties;

(b) Declaratory orders that contain an analysis or decision of substantial importance to the department in carrying out its duties;

(c) Interpretive statements as defined in RCW 34.05.010(8); and

(d) Policy statements as defined in RCW 34.05.010(14).

(2) The department shall maintain indexes of:

(a) Final orders meeting the criteria in subsection (1)(a) of this section, issued by the department and the disciplining authorities identified in RCW 18.130.040;

(b) Declaratory orders meeting the criteria in subsection (1)(b) of this section issued by the department, the state board of health, and disciplining authorities identified in RCW 18.130.040; and

(c) Interpretive and policy statements issued by the department, the state board of health, and disciplining authorities identified in RCW 18.130.040.

(3) The indexes shall, at a minimum, contain the case or document number; type of document; name of parties, if applicable, unless such names are exempt from public disclosure; brief description of subject, program; pertinent legal citation; and location of the document.

(4) The department shall periodically update the indexes to verify that the indexed documents continue to meet the criteria in subsection (1) of this section. The department may, at any time, delete a document from an index. Under RCW 42.17.260(6), a public record may not be cited in a proceeding if it has not been indexed.

(5) The indexes are public records and are available for public inspection and copying in accordance with WAC 246-08-420 and 246-08-440. Indexes are located as follows:

(a) The index of final adjudicative orders and declaratory orders is located in the Adjudicative Service Unit, 310 Israel Road S.E., Tumwater, WA 98501; and

(b) The index of interpretive and policy statements issued by the department and the state board of health is located in the Office of the Secretary, 101 Israel Road S.E., Tumwater, WA 98501.

[Statutory Authority: RCW 43.70.040, 43.70.050, 34.05.220, 42.17.250, 70.02.005. WSR 06-11-056, § 246-08-450, filed 5/11/06, effective 6/11/06. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-08-450, filed 1/31/94, effective 3/3/94. Statutory Authority: RCW 43.70.050. WSR 93-08-004 (Order 346), § 246-08-450, filed 3/24/93, effective 4/24/93.]

**WAC 246-08-480 Index of significant decisions.** (1) The department's index of significant decisions, prepared under RCW 42.17.260, contains orders that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and include an analysis or decision of substantial

importance to the department in carrying out its duties. Together with the indices maintained under WAC 246-08-450, "significant decisions" shall serve as the index required by RCW 42.17.260 (4)(b) and (c).

(2) The department selects the orders to be included in "significant decisions" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. The significant decision index shall include orders meeting the criteria in subsection (1) of this section, issued by the department and the disciplining authorities identified in RCW 18.130.040.

(3) The index shall, at a minimum, contain the case or document number; type of document; name of parties, if applicable, unless such names are exempt from public disclosure; brief description of subject, program; pertinent legal citation; and location of the document.

(4) Any person may nominate a final adjudicative order, other adjudicative order or declaratory order to be evaluated for indexing by completing an Order Index Nomination Request Form. The form can be obtained from and returned to the Adjudicative Service Unit, P.O. Box 47879, Olympia, WA 98504-7879, along with a copy of the nominated order. The department shall make a final decision as to whether to index the nominated order, and that decision is not appealable.

(5) The department shall periodically update and review the index to verify that the indexed documents continue to meet the criteria in subsection (1) of this section. The department may, at any time, delete a document from an index. Under RCW 42.17.260(6), a public record may not be cited in a proceeding if it has not been indexed.

(6) The index is a public record and is available for public inspection and copying in accordance with WAC 246-08-420 and 246-08-440. The index of significant adjudicative orders is located in the Adjudicative Service Unit, 310 Israel Road, Tumwater, WA 98501.

[Statutory Authority: RCW 43.70.040, 43.70.050, 34.05.220, 42.17.250, 70.02.005. WSR 06-11-056, § 246-08-480, filed 5/11/06, effective 6/11/06.]

**WAC 246-08-520 Equal opportunity/affirmative action.** The department is firmly committed to equal opportunity and nondiscrimination both in the work force and in the delivery of services and makes every good faith effort to achieve the objectives of the affirmative action plan.

(1) **Employment** - The department recruits, hires, develops, and promotes persons in all positions without regard to race, creed, color, sex, age, national origin, marital status, or presence of a mental, physical, or sensory handicap. The department seeks to maintain a working environment free of harassment or intimidation, and to reasonably accommodate persons of disability.

(2) **Affirmative action** - The department strives to correct deficiencies regarding the utilization of protected groups, consistent with applicable state and federal laws and guidelines as outlined in the department's affirmative action plan.

(3) **Services** - The department provides services, programs, and lets contracts in a fair and impartial manner. No person shall, on the grounds of sex, race, creed, color, age, national origin, marital status, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or ac-

tivity administered or supervised by the department as required by the federal government as a prerequisite for fiscal grants-in-aid (Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d) and chapter 49.60 RCW.

[Statutory Authority: RCW 43.70.040, 43.70.050, 34.05.220, 42.17.250, 70.02.005. WSR 06-11-056, § 246-08-520, filed 5/11/06, effective 6/11/06. Statutory Authority: RCW 43.70.050. WSR 93-08-004 (Order 346), § 246-08-520, filed 3/24/93, effective 4/24/93. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-520, filed 12/27/90, effective 1/31/91; Order 18, § 248-10-010, filed 2/11/69.]

**WAC 246-08-560 Fees—Payment—Refunds.** (1) Fees are due with applications for initial licensing and renewals. The department will not proceed on applications until required fees are paid.

(2) Fee payments may be made in person or by mail. Payment shall be by check, draft, or money order made payable to the department of health.

(3) If a license is denied, revoked, or suspended, fees shall not be refunded.

(4) Application for license after denial or revocation shall include fees as provided for in this title.

(5) Failure to pay fees when due shall invalidate the license/certification/registration and all privileges granted by the license/certification/registration. A late penalty fee shall be remitted in addition to the annual renewal fee.

(6) The department of health shall refund fees it collects that are paid in excess of the stated fee, or paid erroneously.

(7) The payee shall submit to the department a cancelled check or a cash receipt as proof of payment when requesting a refund.

(8) The department shall make refunds of five dollars or less only upon written request within thirteen months from date of payment.

[Statutory Authority: RCW 43.70.050. WSR 93-08-004 (Order 346), § 246-08-560, filed 3/24/93, effective 4/24/93. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-08-560, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.01.072. WSR 90-08-003 (Order 044), § 246-09-060, filed 3/22/90, effective 4/22/90.]

**WAC 246-08-990 Copying fees.** The copy fees and payment procedures in this section apply to public records requests to the department of health (department) under chapter 42.56 RCW and received on or after July 23, 2017.

(1) Pursuant to RCW 42.56.120 (2)(b), the department is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The department does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct a study to determine actual copying costs would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs,

including fees for electronic records, provided in RCW 42.56.120 (2) (b), (c), (3), and (4).

(2) The department will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2) (b) and (c).

(3) The department will charge for customized services pursuant to 42.56.120(3). The department will not provide customized access if doing so will interfere with other essential agency functions.

(4) Under RCW 42.56.130, the department may charge other copy fees authorized by statutes outside of chapter 42.56 RCW.

(5) The department may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(6) The following fees for copying methods used by the department include:

<b>Copying Method</b>	<b>Fee</b>
Records scanned into electronic format	\$.10/page
Electronic file	\$.05/every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system
Transmission of electronic records	\$.10/gigabyte
Flat fee	\$2.00 (agencies have the option to charge up to \$2 as an alternative to actual or default costs if the agency reasonably estimates and documents that the costs are equal or more than \$2)

(7) Requestors are required to pay for copies in advance of receiving records.

(8) Fee waivers are an exception and may be available for some small requests:

(a) At the discretion of the department a fee waiver may be available when:

(i) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this section.

(b) Fee waivers are not applicable to records provided in installments.

(9) The department may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(10) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The department will notify the requestor of when payment is due.

(11) The requestor must make payment by check or money order to the Washington state department of health. The department prefers not to receive cash. For cash payments, it is within the department's dis-

cretion to determine the denomination of bills and coins that will be accepted.

(12) The department will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

[Statutory Authority: RCW 43.70.040 and 42.56.120. WSR 18-03-124, § 246-08-990, filed 1/19/18, effective 2/19/18.]