

State of Washington
Decision Package

FINAL

Agency: **303 Department of Health**
Decision Package Code/Title: **RL Rules and Disciplinary Backlog**
Budget Period: **2015-17**
Budget Level: **M2-Inflation and Other Rate Changes**

Recommendation Summary Text:

This package addresses the rulemaking backlog which resulted from the four year rulemaking moratorium and health professions disciplinary cases that have grown 14 percent over the past two years. No fee increases will be required to address this workload.

Fiscal Detail

Operating Expenditures		<u>FY 2016</u>	<u>FY 2017</u>	<u>Total</u>
02G-1	Health Professions Acct	623,000	2,438,000	3,061,000
001-1	General Fund- State	6,000	22,000	28,000
Total Cost		629,000	2,460,000	3,089,000
Staffing		<u>FY 2016</u>	<u>FY 2017</u>	<u>Annual Avg</u>
FTEs		7.2	29.0	18.1

Package Description:

Agencies were under a rules moratorium for four years. The moratorium has been lifted and there is a significant backlog of rules. Legislation passed in 2013 requires the Department of Health (department) to review all rules under its jurisdiction every five years. Boards and Commissions have developed a schedule to review all of their rules through 2018 and every five years thereafter. We anticipate this review will identify outdated rules. This work is in addition to any new rules from legislation, petitions for rulemaking, and to keep the rules current with professional standards.

Since 2008, the number of professions regulated has increased by 33 percent, from 61 to 81. Beyond the mere number of professions regulated, the cumulative scope and complexity of practice the department regulates has increased as well. The healthcare system is evolving to more efficiently and effectively serve the needs of patients. This process is hampered when rules do not keep pace with current practice.

New, evolving and potentially expanding scopes of practice approved by the legislature also increase the number and variety of complaints the department receives. This increased variety, or complexity, makes the process of complaint management more difficult as staff members are required to gain expertise about a greater number of professions and unique issues related to each.

Rules

Many of the boards, commissions and programs within Health Systems Quality Assurance (HSQA) have outdated rules that do not support the contemporary delivery of healthcare services. The department works to assure the quality of the healthcare system. We will not achieve quality if the rules regulating healthcare practitioners and facilities do not support innovation.

There are 105 Washington Administrative Code (WAC) chapters assigned to programs in HSQA. The majority of these rules are in the Office of Health Professions and Facilities (HPF). The work necessary to update rules is ongoing. Each rule change requires extensive work with stakeholders in order to reach consensus, which can take several years for complex or controversial rules. The current staff in the HPF is not able to manage this workload. Without added staffing the department will not be able to update rules to keep pace with current practice, and practitioners will be forced to ignore outmoded rules or abandon current practice.

Additionally, the Assistant Attorney General (AAG) to the State Board of Health (SBOH) reviews all proposed rules and advises the SBOH on especially controversial issues and rules such as community water fluoridation, school environmental health and safety, immunizations, and keeping of animals (preventing nuisances and drinking water contamination). During recession and the moratorium on rulemaking, the SBOH reduced meetings, and significantly reduced consultation with its AAG in order to save resources. The moratorium has been lifted and there is a significant backlog of rules, additionally there are a number of unanticipated petitions and requests of the SBOH as well as a number of controversial issues that require legal counsel. Therefore, department anticipates the need for AAG advice to increase to the level of previous of biennia.

Discipline

Over the last two years caseloads overall have increased by nearly 20 percent. Disciplinary caseloads continue to grow in sheer volume and in variety and complexity as new professions present unique practice issues. The department is seeing increasingly complex and adversarial cases as courts require a higher level of proof. Similarly, more licensees are represented by attorneys, and this has increased the use of expert witnesses. The Legislature has also expended the requirement for summary actions, resulting in more high priority cases – i.e. more cases that involve a high risk of patient or public harm. These cases require focused resources to act quickly.

Narrative Justification and Impact Statement:

What specific performance outcomes does the agency expect?

The department will review all rules under its jurisdiction every five years and address disciplinary caseloads in a timely manner.

Performance Measure Detail

**Activity: A013 – State Board of Health
A015 – Patient and Consumer Safety**

Outcome Measures	<u>FY 2016</u>	<u>FY2017</u>
000792 - Complaint investigations initiated against health care facilities within set timelines		15%
00779 - Percent of complaints against Healthcare Professionals completed within set timelines		4%

Is this DP essential to implement a strategy identified in the agency’s strategic plan?

Goal 3: Improve access to quality affordable and integrated health care for everyone in Washington
Objective 2: Ensure safe, quality healthcare

Does this decision package provide essential support to one or more of the Governor's Results Washington priorities?

Goal 4: Healthy and Safe Communities

What are the other important connections or impacts related to this proposal?

The State Board of Health may be challenged on some of the upcoming policy issues. Assuring adequate AAG review of these issues may reduce the potential for legal challenges, or help assure that if challenged they can successfully defend their position. Providing adequate funding for AAG advice will help prevent potential legal challenges, and reduce costs associated with litigation.

What alternatives were explored by the agency and why was this alternative chosen?

There were no other alternatives explored.

What are the consequences of not funding this package?

The department will be out of compliance with reviewing rules every five years and disciplinary backlogs will continue to grow, potentially putting the public at risk.

What is the relationship, if any, to the state capital budget?

N/A

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

All rules that are already required for reviews and revisions.

Expenditure and revenue calculations and assumptions:

Revenue:

None

Expenditures:

Note: Staffing needs identified in this package are the result of the Health Systems Quality Assurance workload staffing model which is updated regularly. Additionally, fiscal year (FY) 2016 costs are assumed for the last quarter of FY 2016.

Beginning in FY 2016, the department requires the following staff to address the rules backlog, five year rules review requirement, and increasing disciplinary workload.

Rules work

0.4 FTE Health Services Consultant 1, 0.5 FTE Health Services Consultant 2, 0.6 FTE Health Services Consultant 4, 0.3 FTE WMS band 2, 0.2 FTE, Epi 2 (data analysis work) and 0.2 FTE Legal Assistant with associated costs such as goods and services, including \$5,000 AAG costs for the State Board of Health. (Total direct costs: 2.2 FTE and \$204,000)

Disciplinary work

0.9 FTE Health Services Consultant 1, 0.3 FTE Health Services Consultant 2, 0.2 FTE Forms and Records Analyst 1, 0.8 FTE Forms and Records Analyst 2, 0.3 FTE Administrative

Assistant 2, 0.2 FTE Health Care Investigator 3, 0.3 FTE Pharmacy Investigator, 0.2 FTE Paralegal 2, 0.2 FTE Hearings Examiner 3 and associated costs.
(Total direct costs: 3.4 FTE and \$299,000)

Division and Agency Overhead/Indirects

0.7 FTE Health Services Consultant 1 and 0.9 Fiscal Analyst 2 and associated costs.
(Total indirect costs: 1.6 FTE and \$126,000)

Beginning in FY 2017 and ongoing, the department requires the following staff to address the rules backlog, five year rules review requirement, and increasing disciplinary workload.

Rules work

1.5 FTE Health Services Consultant 1, 2.0 FTE Health Services Consultant 2, 2.5 FTE Health Services Consultant 4, 1.0 FTE WMS band 2, 1.0 FTE, Epi 2 (data analysis work) and 1.0 FTE Legal Assistant 3 with associated costs, and including \$20,000 AAG costs for the State Board of Health. (Total direct costs: 9.0 FTE and \$799,000)

Disciplinary work

3.5 FTE Health Services Consultant 1, 1.0 FTE Health Services Consultant 2, 1.0 FTE Forms and Records Analyst 1, 3.0 FTE Forms and Records Analyst 2, 1.0 FTE Administrative Assistant 2, 1.0 FTE Health Care Investigator 3, 1.0 FTE Pharmacy Investigator, 1.0 FTE Paralegal 2, 1.0 FTE Hearings Examiner 3 and associated costs.
(Total direct costs: 13.5 FTE and \$1,169,000)

Division and Agency Overhead/Indirects

2.7 FTE Health Services Consultant 1 and 3.8 Fiscal Analyst 2 and associated.
(Total indirect costs: 6.5 FTE and \$492,000)

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

All FY 2017 costs are ongoing in order to keep up with the pace of rule revisions and disciplinary caseloads going forward.

<u>Object Detail</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>Total</u>
A Salaries and Wages	407,000	1,636,000	2,043,000
B Employee Benefits	123,000	490,000	613,000
C Personal Service Contracts	0	0	0
E Goods and Services	77,000	296,000	373,000
G Travel	0	0	0
J Capital Outlays	13,000	0	13,000
T Intra-Agency Reimbursements	9,000	38,000	47,000
Total Objects	629,000	2,460,000	3,089,000