



# PROPOSED RULE MAKING

## CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Labor and Industries

- Preproposal Statement of Inquiry was filed as WSR 08-09-117 ; or  
 Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or  
 Proposal is exempt under RCW 34.05.310(4).

- Original Notice  
 Supplemental Notice to WSR \_\_\_\_\_  
 Continuance of WSR \_\_\_\_\_

**Title of rule and other identifying information:**  
WAC 296-19A - Option 2 Benefits

**Hearing location(s):** Tukwila  
Department of Labor and Industries  
Tukwila Office Training Room  
12806 Gateway Dr  
Tukwila, WA 98168-3311

Date: 10/06/09 Time: 1:00 PM

**Submit written comments to:**

Name: Nancy James  
Address: P.O. Box 44208  
Olympia, WA 98504-4208  
e-mail [jamn235@lni.wa.gov](mailto:jamn235@lni.wa.gov)  
fax (360) 902-4960 by (date) October 20, 2009

**Assistance for persons with disabilities:** Contact

Nancy James by 9-22-09

TTY (360) 902-5787 or (360) 902-5005

**Date of intended adoption:** December 1, 2009  
(Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed rules are necessary for the implementation of Chapter 72, Laws of 2007 (ESSB 5920).

See attachment #1

**Reasons supporting proposal:** This proposed rulemaking will include new rules to clarify the process and requirements for making application for option 2 vocational benefits, and define which vocational costs require department or self-insurer approval and the vocational costs that can and cannot be paid.

**Statutory authority for adoption:** RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (Chapter 72, Laws of 2007 - ESSB 5920).

**Statute being implemented:** RCW 51.32.095, 51.32.099 and 51.32.0991 (Chapter 72, Laws of 2007 - ESSB 5920).

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
 Federal Court Decision?  Yes  No  
 State Court Decision?  Yes  No  
 If yes, CITATION:

**DATE**  
September 1, 2009

**NAME** (type or print)  
Judy Schurke

**SIGNATURE**

**TITLE**  
Director

**CODE REVISER USE ONLY**

**OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED**

**DATE: September 01, 2009  
TIME: 2:14 PM**

**WSR 09-18-100**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Department of Labor and Industries

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting.....Brenda Heilman	Tumwater	360 902-6313
Implementation....Cheri Ward (State Fund) AnnaLisa Gellerman (Self-Insurance)	Tumwater	360 902-6313
Enforcement.....Robert Malooly	Tumwater	360 902-4209

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared.

This rulemaking is exempt under RCW 19.85.025 (3), referring to RCW 34.05.310 (4), namely RCW 34.05.310(4)(c) because the rulemaking adopts and incorporates without material change ESSB 5920, Chapter 72, Laws of 2007

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain: This rulemaking is exempt under RCW 34.05.328 (5) (b) (iii) because it adopts and incorporates without material change ESSB 5920, Chapter 72, Laws of 2007.

### **WAC 296-19A-600**

#### **How does an eligible injured worker elect vocational Option 2 benefits?**

- Explains when the worker must choose option 2 benefits if electing option 2 benefits.
- Explains that the worker's claim will be closed when electing option 2 benefits and the worker will receive the option 2 award and access to option 2 training funds.

### **WAC 296-19A-610**

#### **What is a vocational Option 2 award?**

- Explains how the Option 2 award is calculated.
- Explains the method of payment of the Option 2 award to the worker.
- Clarifies adjustments and deductions that can and cannot be made.

### **WAC 296-19A-620**

#### **What are the vocational Option 2 training funds?**

- Explains when training funds are available to the worker and for what period.
- Clarifies what training programs Option 2 funds can be used.
- Explains basis for annual adjustment for available training funds.
- Explains that workers are notified by department order of training funds available and how they can access their current balance.

### **WAC 296-19A-630**

#### **Can a worker change their option election?**

- Explains time frame for changing election options.

### **WAC 296-19A-640**

#### **What costs cannot be paid from the vocational Option 2 training funds:**

- Specifies what costs training funds cannot be used for.

### **WAC 296-19A-650**

#### **Is the vocational Option 2 award paid if the worker is confined in an institution and under sentence?**

- Explains that the worker will not receive the option 2 award while incarcerated under sentence and when the department or self-insured employer will resume payment.

### **WAC 296-19A-660**

#### **Can a worker use the Option 2 training funds if confined in an institution and under sentence?**

- Explains that Option 2 training funds are available while a worker is incarcerated under sentence upon application to the department of self-insurer.

**WAC 296-19A-670**

**If a worker dies while receiving the vocational Option 2 award, will the award be paid to the worker's beneficiaries?**

- Explains that the award is not payable to the worker's beneficiaries or estate.