CONCISE EXPLANATORY STATEMENT

Verification for Presumptive Coverage of Frontline Workers and Health Care Workers
Chapter 296-14 WAC, Industrial Insurance
WAC 296-14-340 Frontline workers – Verification for contraction of an infectious or contagious disease that is the subject of a public health emergency – RCW 51.32.181
WAC 296-14-341 – Health care workers – Verification for contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency – RCW 51.32.390

Public Hearing: November 28, 2022
Adoption: February 28, 2023
Effective: March 31, 2023

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I. Purpose of Rulemaking

A. Background

Engrossed Substitute Senate Bill 5115 (ESSB 5115) and Engrossed Substitute Senate Bill 5190 (ESSB 5190), both from the 2021 legislative session, outlined requirements for a new *prima facie* occupational disease presumption for frontline and health care workers. ESSB 5115 outlined requirements for a new *prima facie* occupational disease presumption for frontline workers while ESSB 5190 outlined requirements for a new *prima facie* occupational disease presumption for health care workers.

The adoption of these rules will align with RCW 51.32.181 and RCW 51.32.390 and will define what is and is not verification of contraction by frontline workers and what is and is not verification of contraction or quarantine by healthcare workers of an infectious or contagious disease that is the subject of a public health emergency.

B. Summary of the rulemaking activities

The department stakeholdered the proposed rule with the following groups:

- Washington State Self-Insurers Association (WSIA)
- Washington State Association for Justice (WSAJ)
- Workers Compensation Advisory Committee (WCAC)
- Retrospective Rating Advisory Committee (RAC)
- Industrial Insurance Medical Advisory Committee (IIMAC)

Stakeholder comments were received and considered throughout the rulemaking process.

II. Changes to the Rules (Proposed rule versus rule adopted)

WAC 296-14-340 Frontline workers – Verification for contraction of an infectious or contagious disease that is the subject of a public health emergency – RCW 51.32.181.

- In (1) added "written documentation of". This revision was based on stakeholder questions.
- In (1)(b) added "or verified" after "administered." This was added to clarify for workers who administer their own test that another party to the claim must verify the result. This change was also made to provide clarity that an employer may not be the one physically administering the test. It may be administered by a nurse at their facility or the worker may administer the test at the employer's place of business but the employer could verify the results.
- In (1)(b) changed "employer" to "employer's facility." This was changed in order to cover employers who have nurses or medical facilities on location.
- Removed (2)(c) as the new additions to (1)(b) cover this information more clearly.

WAC 296-14-341 Healthcare workers – Verification for contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency – RCW 51.32.390.

- In (1) added "written documentation of". This revision was based on stakeholder questions.
- In (1)(b) added "or verified" after "administered." This was added to clarify for workers who administer their own test that another party to the claim must verify the result. This change was also made to provide clarity that an employer may not be the one physically administering the test, it may be administered by a nurse at their facility or the worker may administer the test at the employer's place of business but the employer could verify the results.
- In (1)(b) changed "employer" to "employer's facility." This was changed in order to cover employers who have nurses or medical facilities on location.
- Removed (2)(c) as the new additions to (1)(b) cover this information more clearly.
- In (3) added "written documentation of" after "requires." This change provides clarity that verification must be in writing, and to be consistent with the clarifying change made in WAC 296-14-341(1)
- In (3)(a) removed "Written evidence from" since we added "written" in (3). This change was made because the language was no longer needed due to the clarifying changes made in (3).
- In (4)(b) removed the comma after "Quarantine". This was a stakeholder requested addition.
- In (4)(c) added "at the time of quarantine, from the relevant agencies" after "guidelines." This language was updated to provide clarity based on stakeholder feedback that guidelines could be from a number of agencies.

III. Comments on Proposed Rule

A. Comment Period

The public comment period for this rulemaking was October 18, 2022 through November 28, 2022. Two people submitted written comments.

B. Public Hearing

The public hearing was held in a virtual/telephonic meeting on November 28, 2022 at 9:00am. Department staff and 14 other people attended the hearing. Testimony was given by one person.

C. Summary of Comments Received and L&I's Responses

Below is a summary of the comments the department received and the department's response.

General Comments	L&I Response
LNI has for years used the increased risk standard for healthcare and used it on some of our cases during the pandemic. For instance, a back office clinic worker with no direct contact with patients who contracted Covid was allowed by the adjudicator due to increased risk. What is the point of going through all this only to have LNI allow it on the 2nd standard anyway? I think LNI needs to decide a stricter criteria than allowing claims just because someone walks in the door of a healthcare facility.	The department was directed by the legislature to enact rules now codified in RCW 51.32.390 that established a presumption for health care employees as defined in that statute. The legislature adopted a public policy that health care employees are entitled to presumptive coverage without proof of increased risk.
What is the proof required in healthcare for "exposure."	The legislature adopted a public policy that health care employees are entitled to presumptive coverage without proof of increased risk. The purpose of this rulemaking is to provide

	clarity around what it means to provide verification of contraction or quarantine. Defining "exposure" is outside the scope of this rulemaking. Undefined terms, such as "exposure" will be given their plain meaning.
WAC 296-14-340 and 296-14-341	
Subsection 1 in both proposed WAC 296-14-340 and WAC 296-14-341 currently treat a health services provider's diagnosis as equivalent to a positive test for the disease that is the subject of a declared public health emergency. However, this opens the possibility for a worker to rely solely on a diagnosis regardless of whether a scientifically accepted test to confirm the diagnosis exists. Because of this, we recommend adjusting the structure to prioritize test results over a diagnosis to ensure that once tests for the disease are available, they are being used to confirm diagnoses from health services providers. We recommend the following language for WAC 296-14-340 (1) and WAC 296-14-341 (1): In 1a remove, "A diagnosis from a medical provider made by examination" and replace with "A positive test administered by a medical facility, testing facility, pharmacy, or the employer, if a scientifically accepted test is available for the infectious or contagious disease that is the subject of a public health emergency;" and in 1b, remove, "A positive test administered by a medical facility, testing facility, pharmacy, or the employer." Replace with, "If a scientifically accepted test is not available for the infectious or contagious disease that is the subject of a public health emergency, a diagnosis from a medical provider made by examination."	Relying on the diagnosis from a medical provider for workers' compensation is consistent with the current state of Title 51 RCW. The department does not prioritize testing over medical diagnosis from a qualified professional based on examination.
Add "declared" to "public health emergency." Proposed WAC 296-14-340 and WAC 296-14-341 use the term "public health	The definitions in RCW 51.32.181 and 51.32.390 still apply and this rule does not change those in any way.

emergency" throughout. However, "public health emergency" on its' own does not capture the specificity contained in the definitions for "public health emergency" in RCW 51.32.181 and RCW 51.322.390. To eliminate any ambiguity or potential confusion, we recommend adding the term "declared" so that the term reads "declared public health emergency." This would capture the specificity in the underlying statutory definitions and align with the terminology adopted by the Employment Security Department in WAC 192-170-010. This change should be made throughout the proposal.	
Replace "medical provider" with "health services provider." The proposed WACs use the term "medical provider" despite the term being undefined in Chapter 296-14 WAC and Title 51 RCW. In contrast, "health services provider" is defined in in Chapter 51.08 RCW and used throughout Title 51 RCW and Chapter 296-14 WAC. Replacing "medical provider" with "health services provider" would make the proposed regulations consistent with the rest of the WAC chapter and the underlying statute. This change should be made throughout the proposal.	The definition of health services provider in RCW 51.08.095 is too broad and would include providers that would not be able to establish a claim under RCW 51.28.020. The usage of the term "medical provider" indicates intention to limit the providers that can satisfy this rule.
WAC 296-14-341 Health care workers – Verification for contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency – RCW 51.32.390	
In 2c, what does "confirmed by the employer or medical provider" mean? A call, a retest? If someone says they tested at home most PCP's prevent them from coming in for treatment because they have Covid. I think the present process for many employers is to tell an employee to stay home if they have done a home test rather than requiring a medical visit. Section 1 requires a 2nd level test outside the home so I want to be clear on that.	Based on feedback received, WAC 296-14-341(2)(c) was removed because the word "verified" was added in WAC 296-14-341(1)(b). It is correct, that a test administered at home isn't sufficient to verify the contraction of COVID-19.

In 3a, who qualifies as a medical provider/public health official? Would a healthcare system's Employee Health office or teams dedicated to coordinating Covid exposures count or must it be an outside healthcare professional?	It is not required that it is an outside health care professional. If they are licensed to practice medicine with an appropriate specialty to diagnose and/or treat COVID-19, they would qualify as a medical provider.
In 3a, what qualifies as written evidence?	Anything in writing from a medical provider or public health official that specifies the need to quarantine will satisfy WAC 296-14-341(3)(a).
In 3b, what qualifies as confirmation from the employer? Letter? Form? E-mail? Phone call?	Any written communication of confirmation of quarantine from the employer is acceptable.
Strike the comma in (4)(b). The WAC appears to contain an unnecessary comma. We recommend striking the comma, so the line reads, "Quarantine without exposure" and is clear to readers.	We agree that the comma should be removed and the rule language has been updated accordingly.
In 4c, how would we determine the accepted public safety and health guidelines at the time? CDC? LNI? Who is communicating that?	In order to provide clarity, we updated WAC 296-14-341 (4)(c) to include "from the relevant agencies" after "accepted public safety and health guidelines at the time of quarantine."