



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: January 21, 2025

TIME: 8:53 AM

WSR 25-03-115

Agency: Department of Labor & Industries (L&I)

☒ Original Notice

☐ Supplemental Notice to WSR _____

☐ Continuance of WSR _____

☒ Preproposal Statement of Inquiry was filed as WSR 24-19-073 ; or

☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or

☐ Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

☐ Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Updating attending providers and adding psychologists in the case of claims solely for mental health conditions in the following: Chapter 296-14 WAC, Industrial Insurance; Chapter 296-19A WAC, Vocational Rehabilitation; Chapter 296-20 WAC, Medical Aid Rules; Chapter 296-21 WAC, Reimbursement Policies: Psychiatric Services, Biofeedback, Physical Medicine; and Chapter 296-23 WAC, Radiology, Radiation Therapy, Nuclear Medicine, Pathology, Hospital, Chiropractic, Physical Therapy, Drugless Therapeutics and Nursing—Drugless Therapeutics, etc.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 26, 2025	2:30 p.m.	Department of Labor & Industries Headquarters Building Room S117 7273 Linderson Way SW Tumwater, WA 98501 To join electronically: Join Zoom meeting at https://lni-wa-gov.zoom.us/j/8895985899?omn=84949494364 Meeting ID: 889 598 5899 Join by phone (audio only): 253-215-8782 US (Tacoma) Meeting ID 889 598 5899 Find your local number: https://lni-wa-gov.zoom.us/j/8895985899?omn=84949494364	The hybrid meeting (virtual and in-person) will begin at 2:30 p.m. and will continue until all oral comments are received. A post-hearing overview will then begin and last approximately 15 minutes.

Date of intended adoption: May 20, 2025 (Note: This is NOT the effective date)

Submit written comments to:

Name Jami Lifka
Address Department of Labor & Industries
Office of the Medical Director
PO Box 44321, Olympia, WA 98504-4321
Email Jami.Lifka@lni.wa.gov
Fax 360-902-6315
Other

Beginning (date and time) January 22, 2025, 8:00 a.m.

By (date and time) February 28, 2025, at 5:00 p.m.

Assistance for persons with disabilities:

Contact Victoria Rich
Phone 360-902-6298

Fax 360-902-6315
TTY 711 for 360-902-6298
Email Victoria.Rich@lni.wa.gov
Other

By (date) February 17, 2025, at 4:00 p.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose of this rulemaking is to implement House Bill 1197 (chapter 171, Laws of 2023) *Defining attending provider and clarifying other provider functions for workers' compensation claims, and adding psychologists as attending providers for mental health only claims*. A new section in HB 1197 lists in statute who can be attending providers on Washington's workers' compensation claims. It includes providers who are already in the definition of "attending provider" in WAC 296-20-01002 *Definitions*. The bill adds "psychologists in the case of claims solely for mental health conditions, and physician assistants" to that list. To reflect that change L&I is proposing to add those two provider types to the definition of "attending provider" in WAC 296-20-01002 *Definitions* and to other applicable WACs in Title 296 WAC.

L&I is also proposing amendments to Title 296 WAC for clarity and for consistency with the bill. One example is that the current rule on the "Attending provider report" requires the condition(s) diagnosed including the current federally adopted International Classification of Diseases, Clinically Modified (ICD-CM) codes. The proposed rule clarifies that, for a mental health condition(s), the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM) designated by L&I. While this is new to the "attending provider report", it reflects current practice.

In addition, L&I is proposing to amend WAC 296-20-01501 *Physician assistant rules* to align language with Engrossed Substitute House Bill 2041 (chapter 62, Laws of 2024) *Physician assistant collaborative practice*, and the Department of Health/Washington Medical Commissions' corresponding rule updates to chapter 246-918 WAC. ESHB 2041 authorizes physician assistants to engage in a collaborative practice where a written agreement describes the manner in which the physician assistant is supervised by or collaborates with at least one physician. Examples of language L&I is proposing include a reference to physician assistants working under a collaboration agreement as defined in the Department of Health statute RCW 18.71A.010, and other amended language on credentialing.

Reasons supporting proposal: The amended statute lists all of the attending providers and the duties of those providers. If the rule is not adopted then the current list in WAC 296-20-01002 *Definitions* will not be correct. It could cause confusion that will result in workers having less access to providers that primarily treat mental health conditions, increase long-term disability, and lead to poor outcomes.

Statutory authority for adoption: RCW 51.04.020, 51.04.030, and 51.36.010

Statute being implemented: Title 51 RCW

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

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

Type of proponent: ☐ Private. ☐ Public. ☒ Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Jami Lifka	Tumwater, WA	360-902-4941
Implementation	Brenda Heilman	Tumwater, WA	360-902-4997
Enforcement	Brenda Heilman	Tumwater, WA	360-902-4997

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? ☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name
Address
Phone
Fax
TTY
Email
Other

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

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

Name Jami Lifka, Administrative Regulations Analyst
Address Department of Labor & Industries
Insurance Services/Office of the Medical Director
PO Box 44321
Olympia, WA 98504-4321
Phone 360-902-4941
Fax 360-902-6315
TTY 711: 360-902-4941
Email Jami.Lifka@Lni.wa.gov
Other <https://www.lni.wa.gov/rulemaking-activity>

- ☐ No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

- ☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

- ☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

- ☐ This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.

- ☒ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

- ☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4). (Does not affect small businesses).

- ☐ This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: Check one.

- ☐ The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- ☒ The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)): The portions of proposed rules listed in the section below are not exempt.
- ☐ The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: Complete this section if any portion is not exempt.

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- ☒ No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. As outlined in the chart below, the rule does not impose additional costs to psychologists or physician assistants and will not increase claim costs.

WAC 296-20-01002 <i>Definitions</i> "Acceptance, accepted condition"	<p>The condition being accepted must be specified by one or more diagnosis codes from the current federally adopted edition of the International Classification of Diseases, Clinically Modified (ICD-CM). For mental health conditions, the condition being accepted must also be specified from the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department.</p> <p>Cost implication: The proposed language on the use of the DSM is new to this definition but reflects current practice. Similar language is in WAC 296-21-270 <i>Mental health services</i> and WAC 296-20-330 <i>Impairments of mental health</i>. There is no additional cost to providers and no additional costs on the claim.</p>
WAC 296-20-01002 <i>Definitions</i> "Attending provider report(1)"	<p>The condition(s) diagnosed including the current federally adopted ICD-CM codes and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department and the subjective and objective findings for that condition.</p> <p>Cost implication: The proposed language on diagnosing mental health conditions using the DSM is new to the "attending provider report" but reflects current practice. Similar language is in WAC 296-21-270 <i>Mental health services</i> and WAC 296-20-330 <i>Impairments of mental health</i>. There is no additional cost to providers and no additional costs on the claim.</p>
WAC 296-20-01002 <i>Definitions</i> "Attending provider report(6)"	<p>If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included with the report. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested.</p> <p>Cost implication: All attending providers are required to comment on return to work issues including the effect of an accepted mental health condition on the claim. The proposed language is new to the "attending provider report" but reflects current practice. There is also similar language that relates to physical conditions in subsection (5) of this definition. There is no additional cost to providers and no additional costs on the claim.</p>
WAC 296-20-01002 <i>Definitions</i> "Consultation examination report(5)"	<p>A complete diagnosis of all conditions including the current federally adopted ICD-CM codes and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department and the subjective and objective findings for that condition.</p> <p>Cost implication: The proposed language on diagnosing mental health conditions using the DSM is new to the "consultation examination report" but reflects current practice. Similar language is in WAC 296-21-270 <i>Mental health services</i> and WAC 296-20-330 <i>Impairments of mental health</i>. There is no additional cost to providers and no additional costs on the claim.</p>
WAC 296-20-01002 <i>Definitions</i> "Doctor"	<p>For these rules, means one or more of the following acting within the scope of their professional license: Physician, osteopathic physician, chiropractor, naturopath, podiatric physician, dentist, optometrist, or psychologist.</p> <p>Cost implication: The proposed language adds psychologists to this list. In addition, the proposed language removes the term "attending doctor" from the original title "doctor or attending doctor." As these providers are also listed as an "attending provider" in WAC 296-20-01002 <i>Definitions</i> it is duplicative and confusing to have the term "attending" in both places. There is no additional cost to providers and no additional costs on the claim.</p>
WAC 296-20-01002 <i>Definitions</i> "Modified work status"	<p>The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature or, for accepted mental health conditions, the ability to engage in modified work, which may include relevant accommodations.</p> <p>Cost implication: All attending providers are required to comment on return to work issues including the effect of an accepted mental health condition on the claim. The proposed language on mental health conditions is new to the definition of "modified work status" but reflects</p>

	current practice. There is no additional cost to providers and no additional costs on the claim.
WAC 296-20-01002 <i>Definitions</i> "Physician"	For these rules, means any person licensed to perform one of the following professions: Medicine and surgery; or osteopathic medicine and surgery. Cost implication: The proposed language removes the term "attending physician" from the original title "physician or attending physician." As these providers are also listed as an "attending provider" in WAC 296-20-01002 <i>Definitions</i> it is duplicative and confusing to have the term "attending" in both places. There is no change to what "physician" means under these rules. There is no additional cost to providers and no additional costs on the claim.
WAC 296-20-01002 <i>Definitions</i> "Regular work status"	The worker is capable of returning to their regular work from physical, cognitive, emotional, and behavioral standpoints. Cost implication: All attending providers are required to comment on return to work issues including the effect of an accepted mental health condition on the claim. The proposed language is new to the definition of "regular work status" but reflects current practice. There is no additional cost to providers and no additional costs on the claim.
WAC 296-20-01501(1) <i>Physician assistant rules</i>	Physician assistants may be "attending providers" pursuant to WAC 296-20-01002, under the workers' compensation system. Cost implication: Physician assistants have been able to sign all documents required by attending providers since 2007. In that capacity, they have fulfilled the role of attending providers. There will not be any new administrative changes in that regard. There is no additional cost to providers and no additional costs on the claim.
WAC 296-20-01501(3)(a) and (3)(b) <i>Physician assistant rules</i>	To be eligible to treat and be paid for workers' compensation related services, the physician assistant must obtain a provider number by: (a) Providing the department with their license number and effective date of that license; (b) Providing the name, address, specialty, and active provider number issued by the department of the supervising or collaborating physician(s) on the provider application Cost implication: The proposed language aligns with Engrossed Substitute House Bill 2041 (Chapter 62, Laws of 2024) <i>Physician assistant collaborative practice</i> . The physician assistant will need to provide their license number and effective date of their license instead of a copy of that license. The credentialing process will have this minor change due to ESHB 2041. There is no additional cost to providers and no additional costs on the claim.
WAC 296-20-06101 <i>What reports are health care providers required to submit to the insurer?</i>	Proposed new language in the introduction: This list defines the provider types and associated acronyms used in the table: Physician (MD), osteopathic physician (DO), psychologist (PhD/PsyD), chiropractor (DC), naturopath (ND), podiatric physician (DPM), dentist (DDS), advanced registered nurse practitioner (ARNP), physician assistant (PA), and optometrist (OD). Cost implication: The proposed language is new. It clarifies the acronyms used in the table itself. It includes psychologists (PhD/PsyD). There is no additional cost to providers and no additional costs on the claim.
WAC 296-20-06101 <i>What reports are health care providers required to submit to the insurer?</i>	In summary: The proposed language adds psychologists (PhD/PsyD) to the list of providers that may sign and be paid for completion of the Report of Accident (Workplace Injury, Accident or Occupational Disease) form, the Provider's Initial Report form, and the Application to Reopen Claim Due to Worsening of Condition form. Cost implication: Every claim will have an attending provider that can complete these forms. There is no additional cost to providers and no additional costs on the claim
WAC 296-20-06101 <i>What reports are health care providers required to submit to the insurer?</i> "Attending provider report(1)"	The condition(s) diagnosed including the current federally adopted ICD-CM codes and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department and the subjective and objective findings for that condition.

	<p>Cost implication: The proposed language on the use of the DSM to diagnose mental health conditions is new to this table but reflects current practice. Similar language is in WAC 296-21-270 <i>Mental health services</i> and WAC 296-20-330 <i>Impairments of mental health</i>. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-06101 <i>What reports are health care providers required to submit to the insurer?</i> "Attending provider report(6)"</p>	<p>If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested.</p> <p>Cost implication: All attending providers are required to comment on return to work issues including the effect of an accepted mental health condition on the claim. The proposed language is new to this table but reflects current practice. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-06101 <i>What reports are health care providers required to submit to the insurer?</i> "Consultation examination report(4)"</p>	<p>The condition(s) diagnosed including current federally adopted ICD-CM codes and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the DSM designated by the department and the subjective and objective findings for that condition.</p> <p>Cost implication: The proposed language is new to this table but reflects current practice. Similar language is in WAC 296-21-270 <i>Mental health services</i> and WAC 296-20-330 <i>Impairments of mental health</i>. There is no additional cost to providers and no additional costs on the claim.</p>
<p>WAC 296-20-06101 <i>What reports are health care providers required to submit to the insurer?</i> "Consultation examination report(9)"</p>	<p>A provider's estimate of physical capacities should be included if the worker has not returned to work. If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included.</p> <p>Cost implication: The proposed language related to return to work issues for a mental health condition is similar to the language on physical capacities that is currently in subsection (9). The proposed language is new to this table but reflects current practice. There is no additional cost to providers and no additional costs on the claim.</p>

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name
Address
Phone
Fax
TTY
Email
Other

Date: January 21, 2025

Name: Joel Sacks

Title: Director

Signature:

