



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: January 02, 2019

TIME: 10:55 AM

WSR 19-02-091

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

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-18-076 ; 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) Acupuncture.

WAC 296-20-01505 Provider types and services not covered

WAC 296-20-03002 Treatment not authorized

WAC 296-23-238 Acupuncture rules

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 5, 2019	1:00	L&I Headquarters, 7273 Linderson Way SW, Room S118 Tumwater, WA 98501	

Date of intended adoption: April 30, 2019 (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: Department of Labor & Industries, Office of the Medical Director, 7273 Linderson Way SW, Tumwater WA 98501

By (date) February 5, 2019

Assistance for persons with disabilities:

Contact Jami Lifka

Phone: 360-902-4941

Fax: 360-802-6315

TTY: 711 for 360-902-4941

Email: Jami.Lifka@Lni.wa.gov

Other:

By (date) January 11, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposal will allow the department and self-insurers to pay for acupuncture as specified in WAC 296-23-238. When this rule is effective, the Acupuncture medical coverage decision's approved conditions will only list "low back pain related to an accepted condition on the claim." Other conditions may be considered at a later date based on the best available scientific and clinical evidence. In addition, the proposed rules will allow Acupuncturists, including East Asian Medicine Practitioners (EAMPs), to treat injured workers. EAMPs have 15 different treatment modalities within their scope of practice (RCW 18.06.010). These proposed rule changes will only apply to acupuncture.

Under Title 51 RCW, treatment allowed on workers' compensation claims must be curative or rehabilitative. As with other treatment used to help injured and ill workers to heal, acupuncture focuses on recovery from workplace injury, functional

improvement, and return to work.

L&I used a pilot project as authorized by RCW 34.05.313 to determine how acupuncture treatment can best be incorporated into the workers' compensation setting. Current rules state that the department or self-insurer will not allow nor pay for acupuncture (WAC 296-20-03002) and will not pay for services performed by Acupuncturists (WAC 296-20-01505). Under the pilot, these current provisions related to acupuncture and Acupuncturists have been waived for pilot participants. Pilot program results have been considered in developing this proposed rule language. The pilot will continue until the adoption and effective date of final rules, after which time the criteria in the proposed rule language will take effect. Acupuncture treatment may then be administered by any L&I provider acting within the scope of their licensure.

Reasons supporting proposal: L&I previously reviewed the best available scientific and clinical evidence related to the efficacy and safety of acupuncture and concluded that acupuncture may be effective for treating low back pain. The goal for this pilot is to collect information in order to inform the provision of acupuncture treatment for low back pain to injured workers covered by Washington's workers' compensation system. Data being gathered through the course of the pilot includes functional questionnaires, billing data, and discharge reasons. Through over one year of data gathering, the consistency of the claims, as well as the low error rate in the submitted data, was determined to be sufficient to move forward with finalizing rule language.

Statutory authority for adoption: RCW 51.04.020 and RCW 51.04.030

Statute being implemented: RCW 51.04.020 and RCW 51.04.030

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:

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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Karen Jost	Department of L&I, 7273 Linderson Way SW, Tumwater WA 98501	360-902-6699
Implementation:	Karen Jost	Department of L&I, 7273 Linderson Way SW, Tumwater WA 98501	360-902-6699
Enforcement:	Vickie Kennedy	Department of L&I, 7273 Linderson Way SW, Tumwater WA 98501	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

Address: Department of Labor & Industries, PO Box 44321, Olympia WA 98504-4321

Phone: 360-902-4941

Fax: 360-902-6315

TTY: 711 for 360-902-4941

Email: Jami.Lifka@Lni.wa.gov

Other:

No: Please explain: .

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

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 ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If 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 analysis showing how costs were calculated. The associated costs for the proposed rule are medical costs to pay for the treatment that is associated with the workers' compensation claim and effect the premium employers pay. Premiums are based on the risk classifications assigned to an employer and the employer's experience factor.

Under the proposed rule, acupuncture treatment is limited to a maximum of 10 visits, may only be used to treat low back pain related to an accepted condition on the claim, and has a maximum cost per visit of \$107.78.

The department initiated pilot rulemaking, filed on September 5, 2017 (Washington State Register 17-18-076) to determine how best to incorporate acupuncture treatment into the workers' compensation setting. The pilot began October 1, 2017. As of October 15, 2018, the provision of acupuncture within the pilot has incurred \$276,847.70 in costs on 369 claims. When the total cost of these 369 claims is summed, the current incurred cost is near \$23.5 million with the current incurred cost and reserved or expected costs is nearly \$32.7 million. Therefore, acupuncture represents 1.18% and 0.85% of the current and projected costs respectively.

For the 369 claims, the median total costs incurred on the claim was \$35,765 with the median costs for acupuncture treatment of \$970 (2.7% of costs incurred), the average total costs were \$88,586 with the average costs for acupuncture treatment of \$782 (less than 1% of the cost incurred).

Based on the pilot rule experience, acupuncture treatment represents a small percentage of the costs on the claims receiving it and are limited to medical rate component to the premium and therefore, it is not expected that the costs associated with acupuncture treatment would affect the base rates for a classification or the experience factor of an employer. As such, the proposed rules are not expected to add additional costs.

In addition, the employers pay premiums on a per worker-hour/unit basis for each assigned risk class. Because the premium is based on the number of worker hours, it eliminates the potential for any disproportionate impact on small businesses.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert 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 2, 2019

Name: Joel Sacks

Title: Director

Signature:

