



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: August 20, 2019

TIME: 4:13 PM

WSR 19-17-078

Agency: Department of Labor & Industries

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-12-090 ; 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) Chapter 296-19A WAC, Vocational Rehabilitation

Hearing location(s):

Date: Time: Location: (be specific) Comment:

Date:	Time:	Location: (be specific)	Comment:
October 2, 2019	10:00 a.m.	Department of Labor & Industries 7273 Linderson Way SW Tumwater WA 98501 Room S117/S118	

Date of intended adoption: October 22, 2019 (Note: This is NOT the effective date)

Submit written comments to:

Name: Laurinda Grytness

Address: Department of Labor & Industries, Insurance Services, PO Box 44329 Olympia WA 98504-4329

Email: Laurinda.grytness@Lni.wa.gov

Fax: 360-902-6706

Other:

By (date) October 4, 2019, by 6:00 p.m.

Assistance for persons with disabilities:

Contact Tara Osuna

Phone: 360-902-4252

Fax: 360-902-6509

TTY: 360-902-4252

Email: Tara.Osuna@Lni.wa.gov

Other:

By (date) September 3, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rules will support the department's vocational recovery effort by:

- Ensuring expectations of vocational providers are better aligned with the return-to-work language in RCW 51.32.095.
- Addressing certain requirements for vocational firms.
- Outlining when and to what degree vocational providers may be subject to corrective action or sanctions.

Early intervention services and reporting

WAC 296-19A-040: Proposes changing the name of early intervention services to vocational recovery services to align with other related, proposed amendments and with the language of RCW 51.32.095. Clarifies that self-insurers may make any of the listed referrals and/or provide services to address priorities listed in RCW 51.32.095(2).

WAC 296-19A-045: Removes WAC 296-19A-050 (What are vocational recovery services?) from the list of rules about vocational rehabilitation referrals that apply only to State Fund claims, in alignment with the proposed amendment to WAC 296-19A-040.

WAC 296-19A-050: In the past, this rule limited the focus of vocational providers to return-to-work options with the employer of injury or the current employer. The proposed amendment outlines a new service (called vocational recovery) which requires vocational recovery services through the return-to-work priorities (a) through (g) in RCW 51.32.095(2). The proposed amendments support the department's expectations of vocational providers to provide worker-centric services that address work disability, use best practices to increase worker engagement and activation, and focus on assisting the worker with their needs and return-to-work goals.

WAC 296-19A-060: The proposed amendment replaces early intervention progress reports with a vocational recovery plan, strategies, and next steps. After submitting the vocational recovery plan to the department and the worker, the vocational provider sends an update every 30 days.

Assessment services (ability-to-work assessment)

WAC 296-19A-065: Under current rules, when return-to-work options with the employer of injury are exhausted or do not exist, the vocational provider recommends an ability-to-work assessment, which focuses on determining whether a worker may be eligible for retraining. The proposed amendment, when combined with the proposed changes in WAC 296-19A-050, eliminates the gap in services by redefining ability-to-work assessment as an activity that generally occurs only after the vocational provider has applied the services outlined in the new vocational recovery rule (WAC 296-19A-050), documented their efforts, and those services did not result in a return to work or a valid job offer.

Qualifications to provide vocational services

WAC 296-19A-210: The proposed amendment outlines requirements for vocational firms to receive referrals, including completing and submitting the firm provider agreement and updating it at least annually, adhering to guidelines for distribution of unassigned firm referrals, and submitting, implementing, and reporting on a department-approved quality-assurance plan.

Proposed new rules on vocational provider/firm conduct

The current rules are very limited regarding VRC behaviors or conduct; the majority of these rules address adherence to other rules and billing policies. The department proposes new rules to address these issues.

WAC 296-19A-262: Lists actions related to conduct that may result in corrective action or sanctions.

WAC 296-19A-264: Outlines the potential corrective actions or sanctions.

WAC 296-19A-266: Describes how the department will handle complaints or allegations of sexual misconduct/contact by a vocational provider, outlining when and to what degree they may be subject to corrective action or sanctions.

WAC 296-19A-268: Clarifies that vocational providers are subject to background checks at least once every two years and prior to receiving referrals for services.

WAC 296-19A-269: Makes provisions for independent review for permanent sanctions.

Proposed for repeal

WAC 296-19A-260 What are the possible consequences for a provider that does not comply with the RCWs, WACs, or department policies?

Reasons supporting proposal: See above.

Statutory authority for adoption:

RCW 51.04.020 and 51.04.030, RCW 51.32.095, RCW 51.36.100 and 51.36.110.

Statute being implemented: RCW 51.32.095

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION:

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

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

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Laurinda Grytness	Tumwater, Washington	360-902-6362
Implementation:	Ryan Guppy	Tumwater, Washington	360-902-5931
Enforcement:	Vickie Kennedy	Tumwater, Washington	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: Laurinda Grytness
Address: Department of Labor & Industries, Insurance Services, PO Box 44329 Olympia, WA 98504-4329
Phone: 360-902-6362
Fax: 360-902-6706
TTY: 360-902-4252
Email: Laurinda.grytness@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:
- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input 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 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 ____.

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 delivery of vocational recovery services, with a worker-centric approach and application of best practices, will increase the likelihood of workers' return to work and/or stay at work, and decrease work disability and associated costs. This is expected to result in an overall cost savings to the workers' compensation system. Currently, the first vocational intervention on a claim is an Ability to Work Assessment (AWA). Under the proposed rules, vocational recovery services will be the first intervention and limited scope AWAs will be performed only when no return-to-work options are identified with vocational recovery services. In 2018, the department began a pilot to test the vocational recovery services. As discussed in the Cost Benefit Analysis, the average costs of first AWA services is \$3,059 compared to an average cost of the vocational recovery pilot of \$2,100. Twenty percent of the department's pilot vocational recovery referrals moved to AWA, with average costs of subsequent AWA of \$2,315. Looking at total number of referrals in 2018, the vocational recovery services costs would result in a total average claim cost of approximately \$18.5 million compared to an approximate cost of \$22 million for AWA services as the first intervention. In addition, employers pay premiums on a per worker-hour/unit basis for each assigned risk class so there is no potential for any disproportionate impact on small businesses even if the overall cost to claims was increased.

Specific to vocational providers, the department will pay vocational providers for appropriately billed services. Vocational firms generally consider oversight planning in their administrative overhead, and the department has worked closely with a representative group of firm owners and managers to identify quality assurance elements that can be evaluated and validated through existing methods and processes.

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: August 20, 2019

Name: Joel Sacks

Title: Director

Signature:

