

**Surgical Smoke:
Implementation of
SHB 1779 and DOSH Rulemaking
Public Stakeholder Meeting
May 19, 2023
9:30 a.m.**





Agenda

- Introductions
- Background & Implementation Strategy — Kevin Walder, DOSH Standards
- Draft Rule — John Stebbins, DOSH Technical Services
- Questions/Comments — Open Forum



What is surgical smoke and why is it a hazard?

- Surgical smoke is a mixture of particulate, vapors, and gases released by energy applying medical devices.
- Devices utilize lasers, electrical, heat, or plasma to cut, remove, or adhere body tissues.
- The smoke is irritating and may include toxic or infectious components.
- Evacuation systems utilize a suction system, which may be incorporated into the surgical tool, to capture the smoke and filter or exhaust it away from workers and patients.



Background

- **Substitute House Bill (SHB) 1779** passed into law in 2022, creating two new laws that will take effect on January 1, 2024:
 - RCW **49.17.500** Adoption of policies requiring the use of a smoke evacuation system during a surgical procedure.
 - RCW **49.17.505** Surgical smoke evacuation account.



RCW [49.17.500](#) Adoption of policies requiring the use of a smoke evacuation system during a surgical procedure.

- Requires employers in hospitals and ambulatory surgical settings to adopt and adhere to policies covering the use of smoke evacuation systems to protect workers who may be exposed to surgical smoke.



RCW 49.17.505 Surgical smoke evacuation account.

- Allows eligible hospitals licensed for 25 or fewer beds and those certified as sole community hospitals by Medicare/Medicaid to seek reimbursement of up to \$1,000 per operating room in 2025 for surgical smoke equipment purchased in 2024.



Implementation & Enforcement

- RCW 49.17.500 (3)

“The department shall ensure compliance with this section during any on-site inspection.”

- RCW 49.17.500 (5)

“The department may adopt rules as necessary to administer this section.”

- RCW 49.17.505 (3)(c)

“The department of labor and industries must determine the process for making an application for reimbursement.”



Implementation & Enforcement

- L&I now has the responsibility to implement and enforce these new surgical smoke laws, but...
- Because L&I enforcement staff cite WAC (rules) rather than RCW (statutes), L&I must adopt new rules
- Expedited Rulemaking is the most efficient way for L&I to adopt rules that are substantively identical to a statute



Expedited Rulemaking

- Expedited rulemaking allows for the adoption of a rule to be fast-tracked under circumstances when “the proposed rules adopt... without material change... Washington state statutes... if the material adopted... regulates the same subject matter.” [RCW 34.05.353\(1\)\(b\)](#)
- No public hearings/public comment period, however...
- If anyone objects to the use of expedited rulemaking within 45 days of filing the process must revert to standard rulemaking.
- Much quicker process, can take as little as 45 days from initial filing to adoption



Rationale for Expedited Rulemaking

- L&I must adopt a new rule (WAC) to adequately enforce the new law (RCW)
- The new rule (WAC) must be in place by January 1, 2024
- L&I can enforce the law fully without creating additional or more prescriptive requirements for employers
- L&I can provide additional guidance regarding development of a policy or selection and use of equipment without imposing additional regulations
- The purpose of rulemaking is not to “re-legislate” a bill in order to expand its scope



Considerations for a different approach

- L&I plans to conduct expedited rulemaking solely to implement and enforce the law when it takes effect.
- If there is significant stakeholder interest in expanded, more prescriptive surgical smoke rules, L&I will consider conducting a separate, subsequent rulemaking to address anything outside of the scope of RCW 49.17.500



Draft Rule – WAC 296-62-510 (Ch 62 Part R-1)

- WAC 296-62-51010 Scope and application.
- WAC 296-62-51020 Definitions.
- WAC 296-62-51030 Surgical smoke program.
- WAC 296-62-51040 Surgical smoke evacuation systems.
- WAC 296-62-51060 Effective dates.
- Appendix A – Reimbursement for Smoke Evacuation Systems



WAC 296-62-51010 Scope and application.

- Hospitals and ambulatory surgical facilities as defined in RCW.
 - Does not include individual or group practices performing procedures in their offices.
- Informational paragraph for facilities not covered on applicable WISHA rules .
 - Existing requirements under Chapter 296-841 WAC require assessment of airborne contaminants.
 - Controls, respirators and other requirements apply based on exposure.



WAC 296-62-51020 Definitions.

- “Surgical smoke” and “smoke evacuation system”
- RCW definition of “energy generating device” combined with “surgical smoke”
- RCW “health care employer” covered by scope



WAC 296-62-51030 Surgical smoke program.

- Program required
- Minimum program elements
 - Selection of surgical smoke evacuation systems
 - Policy for use to prevent surgical smoke contact with eyes or respiratory system
- Selection specified to be consistent with other WISHA rules on equipment—allows for employee review



WAC 296-62-51040 Surgical smoke evacuation systems.

- Requires systems as feasible—consistent with enforcement under WISHA
- Specifications
 - Capture smoke as close to origination point as feasible
 - Smoke must be neutralized or exhausted from the workspace



WAC 296-62-51060 Effective dates.

- January 1, 2024
- WAC 296-62-51030 and WAC 296-62-51040 not applicable to small, rural hospitals until January 1, 2025
- “Hospitals with fewer than 25 acute care beds in operation” evaluated based on licensing for fewer than 25 beds. (Same language for reimbursement.)



Appendix A – Reimbursement for Smoke Evacuation Systems

- Informational appendix
- Provides reimbursement information from the law
- A permanent URL to be given for locating administrative process information for reimbursement applications



Reimbursement

- Currently not funded; L&I is currently working through the grant process and plans to submit a budget request to the legislature
- L&I Fiscal staff are currently coordinating with DOSH to develop an application and guidelines for applicants
- If the legislature provides funding, L&I will announce all pertinent details for reimbursement well in advance of 1/1/25 and maintain updated information on our website



Additional Information

Webpage - <https://www.lni.wa.gov/safety-health/safety-rules/rulemaking-stakeholder-information/surgical-smoke>

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