

WSR 23-16-154
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 2, 2023, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-087.

Title of Rule and Other Identifying Information: Chapter 296-21 WAC, Reimbursement policies: Psychiatric services, biofeedback, physical medicine; WAC 296-21-270 Mental health services.

Hearing Location(s): On September 7, 2023, at 9:00 a.m., Zoom meeting <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone 253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/j/9361655337>. The virtual meeting starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: October 31, 2023.

Submit Written Comments to: Suzy Campbell, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by 5:00 p.m. on September 7, 2023.

Assistance for Persons with Disabilities: Contact Cristina Gaffoglio, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email cristina.gaffoglio@lni.wa.gov, by August 31, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I rules don't currently allow master's level therapists (MLTs) to treat injured workers. This rule making proposes to allow for this new provider type. L&I initiated a pilot on January 1, 2020, to determine how MLTs can best be incorporated into the workers' compensation setting and learned adding this provider type significantly expanded worker access to care.

Reasons Supporting Proposal: The pilot has shown increased worker access to mental health services, both in rural and urban areas. Providers are generally satisfied with the pilot, demonstrated by pilot participant surveys used to gauge program quality. L&I anticipates adding MLTs to its list of providers will further the goal of expanding access to care for injured workers.

Statutory Authority for Adoption: RCW 34.05.313, 51.04.020, and 51.04.030.

Statute Being Implemented: RCW 51.04.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Kim Wallace, Tumwater, Washington, 360-867-8753; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@lni.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed amendment adds three additional provider types to the list of providers eligible to deliver certain mental health services. All permitted mental health services are within the scope of practice for the three new provider types. The proposed rule does not change the mental health services that can be provided to injured workers, nor the injured workers eligible for mental health treatment, nor the types of mental health conditions for which treatment can be provided. As the proposed rule only allows for the additional provider types to provide and bill for services already provided by psychiatrists, doctoral level psychologists, and psychiatric advanced registered nurse practitioners, it is not expected to increase costs for providing these services. Under L&I policy, the additional three provider types cannot diagnose or comment on causality or ability to work.

August 2, 2023
Joel Sacks
Director

OTS-4609.1

AMENDATORY SECTION (Amending WSR 15-19-139, filed 9/22/15, effective 10/23/15)

WAC 296-21-270 Mental health services. (1) The following rule supplements information contained in the fee schedules regarding coverage and reimbursement for mental health services.

(2) Treatment of mental conditions to workers is to be goal directed, time limited, intensive, targeted on specific symptoms and functional status and limited to conditions caused or aggravated by the industrial condition. Specific functional goals of treatment must be identified and treatment must have an emphasis on functional, measurable improvement towards the specific goals.

(3) Mental health services to workers are limited to those provided by psychiatrists, doctoral level psychologists ((and)), psychiatric advanced registered nurse practitioners, licensed independent clinical social workers, licensed marriage and family therapists, licensed mental health counselors, and according to department policy. Psychiatrists and psychiatric advanced registered nurse practitioners may prescribe medications while providing concurrent care. For purposes of this rule, the term "mental health services" refers to treatment by psychologists, psychiatric advanced registered nurse practitioners, ((and)) psychiatrists, licensed independent clinical social workers, licensed marriage and family therapists, and licensed mental health counselors.

(4) Initial evaluation, and subsequent treatment must be authorized by department staff or the self-insurer, as outlined by department policy. The report of initial evaluation, including test results, and treatment plan is to be sent to the worker's attending provider, as well as to the department or self-insurer. A copy of the ((sixty))

60-day narrative reports are to be sent to the department or self-insurer and to the attending provider.

(5) (a) All providers are bound by the medical aid rules in chapter 296-20 WAC. Reporting requirements are defined in chapter 296-20 WAC. In addition, the following are required: Testing results with scores, scales, and profiles; report of raw data sufficient to allow reassessment by a panel or independent medical examiner. Explanation of the numerical scales is required.

(b) Providers must use the edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association designated by the department in the initial evaluation, follow-up evaluations and (~~sixty~~) 60-day narrative reports.

(c) A report to the department or self-insurer will contain, at least, the following elements:

(i) Subjective complaints;

(ii) Objective observations;

(iii) Identification and measurement of target symptoms and functional status;

(iv) Assessment of the worker's condition and goals accomplished in relation to the target symptoms and functional status; and

(v) Plan of care.

(6) The codes, reimbursement levels, and other policies for mental health services are listed in the fee schedules.

(7) When providing mental health services, providers must track and document the worker's functional status using validated instruments such as the World Health Organization Disability Assessment Schedule (WHODAS) or other substantially equivalent validated instruments recommended by the department. A copy of the completed functional assessment instrument must be sent to the attending provider and the department or self-insurer, as required by department policy or treatment guideline.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 51.08.142. WSR 15-19-139, § 296-21-270, filed 9/22/15, effective 10/23/15. Statutory Authority: RCW 51.04.020, 51.04.030. WSR 09-14-104, § 296-21-270, filed 6/30/09, effective 7/31/09. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 93-16-072, § 296-21-270, filed 8/1/93, effective 9/1/93.]