WSR 12-03-012
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY
[Filed January 5, 2012, 12:47 p.m.]

Continuance of WSR 11-22-106.

Title of Rule and Other Identifying Information: Amend Regulation I, Section 5.03 (Applicability of Registration Program); and adopt Section 5.12 (Registration of Crushing Operations).

Hearing Location(s): Bates Technical College, Auditorium Room 130 A&B, 1101 South Yakima Avenue, Tacoma, WA 98405, on January 26, 2012, at 8:45 a.m.

Date of Intended Adoption: January 26, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by January 25, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by January 19, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Continue hearing from December 15, 2011, to January 26, 2012.

January 5, 2012
Craig Kenworthy
Executive Director

WSR 12-03-013
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY
[Filed January 5, 2012, 12:48 p.m.]

Continuance of WSR 11-22-108.

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.03 (Notice of Construction).

Hearing Location(s): Bates Technical College, Auditorium Room 130 A&B, 1101 South Yakima Avenue, Tacoma, WA 98405, on January 26, 2012, at 8:45 a.m.

Date of Intended Adoption: January 26, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by January 25, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by January 19, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Continue hearing from December 15, 2011, to January 26, 2012.

January 5, 2012
Craig Kenworthy
Executive Director

WSR 12-03-014
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY
[Filed January 5, 2012, 12:48 p.m.]

Continuance of WSR 11-22-109.

Title of Rule and Other Identifying Information: Adopt Regulation I, Section 9.18 (Crushing Operations).

Hearing Location(s): Bates Technical College, Auditorium Room 130 A&B, 1101 South Yakima Avenue, Tacoma, WA 98405, on January 26, 2012, at 8:45 a.m.

Date of Intended Adoption: January 26, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by January 25, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by January 19, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Continue hearing from December 15, 2011, to January 26, 2012.

January 5, 2012
Craig Kenworthy
Executive Director

WSR 12-03-054
PROPOSED RULES
HORSE RACING COMMISSION
[Filed January 11, 2012, 3:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-001.

Title of Rule and Other Identifying Information: WAC 260-70-640 Permitted medication and 260-84-120 Penalties related to permitted medication.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 9, 2012, at 9:30 a.m.

Date of Intended Adoption: March 9, 2012.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by March 6, 2012.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 6, 2012, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Removes the restriction that jockeys may not own horses and allows them to own with certain restrictions.

Reasons Supporting Proposal: Ensures transparency for stakeholders and the public on true ownership of horses.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 11, 2012
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-09-044, filed 4/10/08, effective 5/11/08)

WAC 260-70-640 Permitted medication. Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Failure to administer permitted medication to a horse on a program of permitted medication is a violation of these rules.

(1) The use of one of three approved nonsteroidal anti-inflammatory drugs (NSAIDs) is permitted under the following conditions:

(a) The drug may not exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least twenty-four hours before the post time for the race in which the horse is entered:

(i) Phenylbutazone - 5 micrograms per milliliter in overnight and nongraded stakes races, and 2 micrograms per milliliter in graded stakes races;

(ii) Flunixin - 50 nanograms per milliliter;

(iii) Ketoprofen - 10 nanograms per milliliter.

(b) No NSAID, including the approved NSAIDs listed in this rule, may be administered within the twenty-four hours before post time for the race in which the horse is entered.

(c) The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 1 microgram per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs must be discontinued at least forty-eight hours before the post time for the race in which the horse is entered.

(2) Any horse to which a NSAID has been administered is subject to having a blood and/or urine sample(s) taken at the direction of an official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

AMENDATORY SECTION (Amending WSR 11-03-053, filed 1/14/11, effective 2/14/11)

WAC 260-84-120 Penalties relating to permitted medication. (1) Should the laboratory analysis of serum or plasma taken from a horse show the presence of more than one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of these rules the following penalties will be assessed:

(a) For a first offense within a three hundred sixty-five day period - Fine not to exceed $300;

(b) For a second offense within a three hundred sixty-five day period - Fine not to exceed $750;

(c) For a third offense within a three hundred sixty-five day period - Fine not to exceed $1,000.

(2) Should the laboratory analysis of serum or plasma taken from a horse show the presence of phenylbutazone in excess of the quantities authorized by this rule, the following penalties will be assessed:

(a) For overnight and nongraded stakes races:

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
> 5.0 but < 6.5 mcg/ml	Warning	Fine not to exceed $300	Fine not to exceed $500
> 6.5 but < 10.0 mcg/ml	Fine not to exceed $300	Fine not to exceed $500	Fine not to exceed $1000
> 10.0 mcg/ml	Fine not to exceed $500	Fine not to exceed $1000	Fine not to exceed $2500 and possible suspension

(b) For graded stakes races:

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
≥ 2.0 but < 4.9 mcg/ml	Fine not to exceed $300	Fine not to exceed $500	Fine not to exceed $1000 and 7-day suspension
≥ 5.0 mcg/ml	Fine not to exceed $500	Fine not to exceed $1000 and 7-day suspension	Fine not to exceed $2500 and 15-day suspension

(3) Detection of any unreported permitted medication, drug, or substance by the primary testing laboratory may be grounds for disciplinary action.

(4) As reported by the primary testing laboratory, failure of any test sample to show the presence of a permitted medication, drug or substance when such permitted medication, drug or substance was required to be administered may be grounds for disciplinary action, which may include a fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may include additional fines and/or suspension or revocation.

(5) In assessing penalties for equine medication, prior offenses will count regardless of whether the violation(s) occurred in Washington or another recognized racing jurisdiction, and regardless of the prior concentration level.

WSR 12-03-056
PROPOSED RULES
HORSE RACING COMMISSION
[Filed January 11, 2012, 3:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-089.

Title of Rule and Other Identifying Information: WAC 260-70-630 Threshold levels.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 9, 2012, at 9:30 a.m.

Date of Intended Adoption: March 9, 2012.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by March 6, 2012.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 6, 2012, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Removes the restriction that jockeys may not own horses and allows them to own with certain restrictions.

Reasons Supporting Proposal: Ensures transparency for stakeholders and the public on true ownership of horses.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 11, 2012
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-17-051, filed 8/14/08, effective 9/14/08)

WAC 260-70-630 Threshold levels. (1) Permitted medications.

(a) The following quantitative medications are permissible in test samples up to the stated concentrations:

Procaine - 25 ng/ml urine

Benzocaine - 50 ng/ml urine

Mepivacaine - 10 ng/ml urine

Lidocaine - 50 ng/ml urine

Bupivacaine - 5 ng/ml urine

Clenbuterol - 25 pg/ml serum or plasma

Acepromazine - 25 ng/ml urine

Promazine - 25 ng/ml urine

Salicylates - 750,000 ng/ml urine

Albuterol - 1 ng/ml urine

Pyrilamine - 50 ng/ml urine

Theobromine - 2000 ng/ml urine

Methocarbamol - 1 ng/ml serum or plasma

Glycopyrrolate - 3.5 pg/ml serum or plasma

DMSO - 10 mc/ml serum or plasma

Firocoxib - 40 ng/ml serum or plasma

(b) The official urine or blood test sample may not contain more than one of the above substances, including their metabolites or analogs, and may not exceed the concentrations established in this rule.

(2) Environmental substances.

(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recognized as substances of human use and could therefore be found in a horse. The following substances are permissible in test samples up to the stated concentrations:

Caffeine - 100 ng/ml serum or plasma

Benzoylecgonine - 50 ng/ml urine

Morphine Glucuronides - 50 ng/ml urine

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations:

Stanozolol (Winstrol) - 1 ng/ml urine in all horses regardless of sex.

Boldenone (Equipoise) - 15 ng/ml urine in intact males. No level is permitted in geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5a-oestrane-3β,17a-diol) - 45 ng/ml urine in intact males.

Testosterone - 20 ng/ml urine in geldings. 55 ng/ml urine in fillies and mares. Samples from intact males will not be tested for the presence of testosterone.

(b) All other androgenic-anabolic steroids are prohibited in race horses.

WSR 12-03-089
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 17, 2012, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-068.

Title of Rule and Other Identifying Information: Creating chapter 296-14A WAC, Claim resolution structured settlement agreements, new WAC 296-14A-010 Negotiating settlements—How is a structured settlement agreement negotiated in a state fund claim?, 296-14A-020 Employers, 296-14A-030 Continuation of benefits—Do Title 51 RCW benefits stop during settlement negotiations?, 296-14A-040 Settlement issues—Can issues outside of Title 51 RCW be settled as part of a structured settlement agreement?, 296-14A-050 Future claims—Can future claims be settled as part of a structured settlement?, 296-14A-060 Burden to Title 51 RCW funds—How does a self-insured employer obtain prior approval for a structured settlement agreement if the agreement will burden or impact any funds covered under Title 51 RCW?, 296-14A-070 Protests—What if there is an outstanding protest on a claim that has a final settlement agreement?, 296-14A-080 Payments—What is a periodic payment schedule?, and 296-14A-090 Prior agreements.

Hearing Location(s): Red Lion at the Quay, 100 Columbia Street, Vancouver, WA 98660, on February 21, 2012, at 10:00 a.m.; at the Tukwila L&I Office, Room C30, 12806 Gateway Drive, Tukwila, WA 98168-3311, on February 21, 2012, at 1:00 p.m.; at the Center Place Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216, on February 22, 2012, at 10:00 a.m.; and at L&I Headquarters, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on February 22, 2012, at 10:00 a.m.

Date of Intended Adoption: March 20, 2012.

Submit Written Comments to: Nancy James, Department of Labor and Industries, P.O. Box 44208, Olympia, WA 98504-4208, e-mail nancy.james@lni.wa.gov, fax (360) 902-4960, by 5:00 p.m. on February 24, 2012.

Assistance for Persons with Disabilities: Contact Nancy James by February 7, 2012, TTY (360) 902-5787, or (360) 902-4379.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is needed as part of the implementation of claim resolution structured settlement agreements, allowed by EHB 2123 (chapter 37, Laws of 2011). These agreements will be available for claims for injured workers age fifty-five and older effective January 1, 2012, fifty-three and older effective January 1, 2015, and fifty and older effective January 1, 2016. Section 301 of the legislation states that the legislature recognizes certain workers would benefit from an option allowing them to initiate claim resolution structured settlements to pursue work or retirement goals independent of the workers' compensation system. This rule making creates new rules to clarify requirements and the process for these agreements. This change is expected to significantly impact costs of workers' compensation claims.

Reasons Supporting Proposal: The proposed rules will assist in the implementation [of] EHB 2123. This proposed rule making will include new rules to clarify the process and requirements for making application for and negotiating structured settlements, and define periodic payment schedules.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.04.065, 51.04.069, and chapter 37, Laws of 2011 (EHB 2123).

Statute Being Implemented: RCW 51.04.062, 51.04.063, 51.04.065, and chapter 37, Laws of 2011 (EHB 2123).

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: AnnaLisa Gellermann, Tumwater, Washington, (360) 902-6593; and Enforcement: Beth Dupre, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined the proposed rules do not require a small business economic impact statement because these proposed rules will not impose any new or incremental costs. The proposed rules provide general guidance and specific processes to implement claim resolution structured settlement agreements allowed by EHB 2123 (chapter 37, Laws of 2011) without creating or imposing more stringent standards or requirements for the affected employers. See RCW 19.85.025(4) and 34.05.310 (4)(c) and (e).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nancy James, P.O. Box 44208, Olympia, WA 98504-4208, phone (360) 902-4379, fax (360) 902-4960, e-mail nancy.james@lni.wa.gov.

January 17, 2012
Judy Schurke
Director

Chapter 296-14A WAC

CLAIM RESOLUTION STRUCTURED SETTLEMENT AGREEMENTS

NEW SECTION

WAC 296-14A-010 Negotiating settlements—How is a structured settlement agreement negotiated in a state fund claim? (1) In a state fund claim, any party may submit a structured settlement application form to the department.

(2) The department will perform an initial review and determine if negotiations should proceed. When deciding whether to enter into negotiations for a structured settlement, the department will consider the following nonexclusive factors:

(a) Worker's age;

(b) Nature and extent of injury(ies) or disease(s) related to the claim;

(c) Nature and extent of disabilities related to the condition(s) accepted under the claim;

(d) Other medical conditions unrelated to the claim;

(e) Other open or closed worker compensation claims for the worker;

(f) Other settlements for injuries or diseases;

(g) Worker's life expectancy;

(h) Worker's marital or domestic partnership status;

(i) Number and age of dependents;

(j) Worker's sources of present and future income and benefits;

(k) Worker's employment history;

(l) Worker's education history;

(m) Worker's labor market;

(n) The effect a structured settlement agreement might have on other benefits the worker is receiving or entitled to receive.

(3) If the department decides to negotiate, it will contact the other required parties and obtain their consent to move forward in negotiations, and obtain their consent about how the negotiations will be conducted. Negotiations may be conducted in-person, by phone, or by letter.

(4) If all of the parties voluntarily agree to a settlement, the department will put the agreement in writing. All parties must sign the agreement.

(5) After all parties have signed the structured settlement agreement, the department will forward a copy of the signed agreement to the board of industrial insurance appeals (BIIA), and provide any necessary documentation for the BIIA approval process.

NEW SECTION

WAC 296-14A-020 Employers. (1) **Who is an affected employer?** An employer is an affected employer if the cost of the claim which may be the subject of a structured settlement agreement is included in the calculation of the employer's experience factor used to determine premiums. The department will send notice of any structured settlement agreement negotiations to an affected employer.

(2) **How will an affected employer be notified of a structured settlement agreement negotiation?** When the department decides to begin settlement discussions, the department will notify all affected employers by mail, and will request the employer's participation in the negotiations.

(3) **How long does an affected employer have to respond to the department's notice of a negotiation?** An affected employer has fourteen calendar days from the date the notice is sent to respond to the department's request for participation.

(4) **What happens if an affected employer does not respond to the department's notice of a negotiation?** If the employer does not respond to the request within fourteen calendar days, the department will consider that the employer has declined to participate and will proceed with scheduling negotiations without the employer.

An affected employer who declines to participate as a party to a structured settlement agreement will be bound by the terms of the agreement including any impact the structured settlement may have on the employer's experience factor or on the employer's industrial insurance premiums.

NEW SECTION

WAC 296-14A-030 Continuation of benefits—Do Title 51 RCW benefits stop during settlement negotiations? The department or self-insured employer must continue to manage the industrial insurance claim and pay benefits to which the worker is entitled during any settlement negotiation until the agreement is final.

NEW SECTION

WAC 296-14A-040 Settlement issues—Can issues outside of Title 51 RCW be settled as part of a structured settlement agreement? No. Issues outside of Title 51 RCW including, but not limited to, continued employment or discrimination claims cannot be settled within the structured settlement agreement.

NEW SECTION

WAC 296-14A-050 Future claims—Can future claims be settled as part of a structured settlement? Future industrial injury or occupational disease claims may not be settled as part of a structured settlement. Future claims include, but are not limited to:

(1) Work-related injuries or occupational exposures that have not yet occurred;

(2) Applications for industrial injury or occupational disease benefits that have not yet been filed; and

(3) Claims for future death benefits or survivor benefits when the injured worker is still alive.

NEW SECTION

WAC 296-14A-060 Burden to Title 51 RCW funds—How does a self-insured employer obtain prior approval for a structured settlement agreement if the agreement will burden or impact any funds covered under Title 51 RCW? (1) If a self-insured employer is considering subjecting a fund covered under Title 51 RCW to any responsibility or burden as a result of a structured settlement agreement, the self-insured employer will:

(a) Notify the department in writing and give the director or the director's designee at least thirty days to either approve or deny the request; and

(b) Provide the following information:

(i) A copy of the complete claim file(s) of the injured worker;

(ii) Any other information relevant to the proposed agreement; and

(iii) All terms of the structured settlement agreement, including an explanation of the anticipated impact on the fund(s).

(2) If settlement negotiations continue after the self-insured employer has notified the department of a structured settlement agreement that may impact any funds covered under Title 51 RCW, the self-insured employer will keep the department updated on all terms or information not previously provided.

NEW SECTION

WAC 296-14A-070 Protests—What if there is an outstanding protest on a claim that has a final settlement agreement? Any outstanding protests on a claim with a final settlement agreement are deemed to have been resolved by the agreement.

NEW SECTION

WAC 296-14A-080 Payments—What is a periodic payment schedule? Periodic payment for the purpose of RCW 51.04.063 structured settlements means payments that are made monthly unless the parties agree to a different payment schedule. In no case will payments be made more often than every two weeks.

NEW SECTION

WAC 296-14A-090 Prior agreements. (1) **How can I get a copy of a prior settlement agreement?** The department must keep copies of all final structured settlement agreements. Any party who is actively negotiating a new structured settlement agreement can request a copy of prior agreements involving the same worker, if any exist, from the department.

(2) **What is active negotiation?** Parties will be considered in active negotiations when the requirements of RCW 51.04.063(1) have been met, one hundred eighty days have passed since the claim was received by the department or self-insurer, the order allowing the claim is final and:

(a) All parties have agreed to attempt to resolve the claim(s) through a structured settlement agreement;

(b) The parties are discussing potential resolutions; and

(c) No resolution has been reached.

WSR 12-03-091
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 17, 2012, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-23-142.

Title of Rule and Other Identifying Information: Chapter 296-14 WAC, Industrial insurance, and chapter 296-20 WAC, Medical aid rules.

This rule making provides changes to implement SSB 5801 (chapter 6, Laws of 2011) with regard to an injured worker's initial visit for medical treatment. The law directs the department of labor and industries (L&I) to establish a statewide health care provider network to treat injured workers of employers insured with L&I and with self-insured employers. Rules are necessary to implement these changes. L&I will create and/or amend necessary rules in phases. This rule-making proposal focuses on issues related to the initial visit.

Hearing Location(s): Department of Labor and Industries Headquarters, Room S118, 7273 Linderson Way S.W., Tumwater, WA 98501, on February 23, 2012, at 12:00 p.m.

Date of Intended Adoption: March 6, 2012.

Submit Written Comments to: Jami Lifka at mailing address: Department of Labor and Industries, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321; or street address: Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501; or e-mail Jami.Lifka@Lni.wa.gov; or fax (360) 902-6315, received no later than 5:00 p.m., February 23, 2012.

Assistance for Persons with Disabilities: Contact office of information and assistance by February 10, 2012, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed language is to amend rules clarifying when injured workers of state fund or self-insured employers are treated by a nonnetwork provider for the initial visit. The proposed language will better inform health care providers regarding what services may be provided by a nonnetwork provider and when care must be transferred to a network provider. This proposed rule making will amend existing WACs related to initial treatment and ongoing care.

Reasons Supporting Proposal: The first phase of rule making related to SSB 5801 enabled L&I to set credentialing standards for medical providers, while still allowing injured workers to choose their provider. These proposed rule amendments are needed to clarify initial medical visits and direct a worker's care to a network provider as soon as possible.

Statutory Authority for Adoption: SSB 5801 (chapter 6, Laws of 2011), RCW 51.36.010, 51.04.020, and 51.04.030.

Statute Being Implemented: SSB 5801 (chapter 6, Laws of 2011) and RCW 51.36.010.

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

Name of Proponent: Governor Gregoire, 2011 legislators, Provider Network Advisory Group, and department of labor and industries, private, public, or governmental.

Name of Agency Personnel Responsible for Drafting: Leah Hole-Curry, medical administrator, office of the medical director, (360) 902-4996; Implementation: Janet Peterson, program manager for health services analysis, (360) 902-6699; and Enforcement: Beth Dupre, assistant director for insurance services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department did not prepare a small business economic impact statement because it determined that the proposed rules will not have a disproportionate impact on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Leah Hole-Curry, Department of Labor and Industries, P.O. Box 44321, Olympia, WA 98504-4321, phone (360) 902-4996, fax (360) 902-6315, e-mail Leah.Hole-Curry@Lni.wa.gov.

January 17, 2012
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

WAC 296-14-400 Reopenings for benefits. The director at any time may, upon the workers' application to reopen for aggravation or worsening of condition, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. This provision will not apply to total permanent disability cases, as provision of medical treatment in those cases is limited by RCW 51.36.010.

The seven-year reopening time limitation shall run from the date the first claim closure becomes final and shall apply to all claims regardless of the date of injury. In order for claim closure to become final on claims where closure occurred on or after July 1, 1981, the closure must include documentation of medical recommendation, advice or examination. Such documentation is not required for closing orders issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall for the purposes of this section only, be deemed issued on July 1, 1985.

The director shall, in the exercise of his or her discretion, reopen a claim provided objective evidence of worsening is present and proximately caused by a previously accepted asbestos-related disease.

In order to support a final closure based on medical recommendation or advice the claim file must contain documented information from a doctor, or nurse consultant (departmental) or nurse practitioner. The doctor or nurse practitioner may be in private practice, acting as a member of a consultation group, employed by a firm, corporation, or state agency.

For the purpose of this section, a "doctor" is defined in WAC 296-20-01002.

When a claim has been closed by the department or self-insurer for sixty days or longer, the worker must file a written application to reopen the claim. An informal written request filed without accompanying medical substantiation of worsening of the condition will constitute a request to reopen, but the time for taking action on the request shall not commence until a formal application is filed with the department or self-insurer as the case may be.

A formal application occurs when the worker and doctor complete and file the application for reopening provided by the department. Upon receipt of an informal request without accompanying medical substantiation of worsening of the worker's condition, the department or self-insurer shall promptly provide the necessary application to the worker for completion. For services or provider types where the department has established a provider network, beginning January 1, 2013, medical treatment and documentation for reopening applications must be completed by network providers.

If, within seven years from the date the first closing order became final, a formal application to reopen is filed which shows by "sufficient medical verification of such disability related to the accepted condition(s)" that benefits are payable, the department, or the self-insurer, pursuant to RCW 51.32.210 and 51.32.190, respectively shall mail the first payment within fourteen days of receiving the formal application to reopen. If the application does not contain sufficient medical verification of disability, the fourteen-day period will begin upon receipt of such verification. If the application to reopen is granted, compensation will be paid pursuant to RCW 51.28.040. If the application to reopen is denied, the worker shall repay such compensation pursuant to RCW 51.32.240.

Applications for reopenings filed on or after July 1, 1988, must be acted upon by the department within ninety days of receipt of the application by the department or the self-insurer. The ninety-day limitation shall not apply if the worker files an appeal or request for reconsideration of the department's denial of the reopening application.

The department may, for good cause, extend the period in which the department must act for an additional sixty days. "Good cause" for such an extension may include, but not be limited to, the following:

(1) Inability to schedule a necessary medical examination within the ninety-day time period;

(2) Failure of the worker to appear for a medical examination;

(3) Lack of clear or convincing evidence to support reopening or denial of the claim without an independent medical examination;

(4) Examination scheduled timely but cannot be conducted and a report received in sufficient time to render a decision prior to the end of the ninety-day time period.

The department shall make a determination regarding "good cause" in a final order as provided in RCW 51.52.050.

The ninety-day limitation will not apply in instances where the previous closing order has not become final.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-20-015 Who may treat. (((~~(1) In order~~)) To treat workers under the Industrial Insurance Act, a health care provider must qualify as an approved provider under the department's rules. The department must approve the health care provider ((~~through the issuance of a provider number~~)) before the health care provider is eligible for payment for services.

(1) A provider must:

(a) Apply and be enrolled in the provider network per WAC 296-20-01010; or

(b) If the provider network scope in WAC 296-20-01010 is not applicable, apply and obtain a provider account number per WAC 296-20-12401.

If the provider or service is within the scope of the provider network under WAC 296-20-01010, a nonnetwork provider is not authorized to treat and will not be reimbursed by the department or self-insurer for services other than the initial office or emergency room visit. The following services are considered part of the initial office or emergency room visit:

(i) Services that are bundled with those performed during the initial visit where no additional payment is due (as defined in WAC 296-20-01002); and

(ii) In the case of an injured worker directly hospitalized from an initial emergency room visit, all services related to the industrial injury or illness provided through the hospital discharge. Nonnetwork providers must refer injured workers to network providers when additional treatment is needed,

and must provide timely copies of medical records to the other provider.

(2) Para-professionals, who are not independently licensed, must practice under the direct supervision of a licensed health care professional whose scope of practice and specialty training includes the service provided by the para-professional. The department may deny direct reimbursement to the para-professional for services rendered, and may instead directly reimburse the licensed and supervising health care professional for covered services. Payment rules for para-professionals may be determined by department policy.

(3) Procedures and evaluations requiring specialized skills and knowledge will be limited to board certified or board qualified physicians, or osteopathic physicians as specified by the American Medical Association or the American Osteopathic Association.

(4) The department as a trustee of the medical aid fund has a duty to supervise provision of proper and necessary medical care that is delivered promptly, efficiently, and economically. The department can deny, revoke, suspend, limit, or impose conditions on a health care provider's authorization to treat workers under the Industrial Insurance Act. Reasons for denying issuance of a provider number or imposing any of the above restrictions include, but are not limited to the following:

(a) Incompetence or negligence, which results in injury to a worker or which creates an unreasonable risk that a worker may be harmed.

(b) The possession, use, prescription for use, or distribution of controlled substances, legend drugs, or addictive, habituating, or dependency-inducing substances in any way other than for therapeutic purposes.

(c) Any temporary or permanent probation, suspension, revocation, or type of limitation of a practitioner's license to practice by any court, board, or administrative agency.

(d) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the provider's profession. The act need not constitute a crime. If a conviction or finding of such an act is reached by a court or other tribunal pursuant to plea, hearing, or trial, a certified copy of the conviction or finding is conclusive evidence of the violation.

(e) The failure to comply with the department's orders, rules, or policies.

(f) The failure, neglect, or refusal to:

(i) Provide records requested by the department pursuant to a health care services review or an audit.

(ii) Submit complete, adequate, and detailed reports or additional reports requested or required by the department regarding the treatment and condition of a worker.

(g) The submission or collusion in the submission of false or misleading reports or bills to any government agency.

(h) Billing a worker for:

(i) Treatment of an industrial condition for which the department has accepted responsibility; or

(ii) The difference between the amount paid by the department under the maximum allowable fee set forth in these rules and any other charge.

(i) Repeated failure to notify the department immediately and prior to burial in any death, where the cause of the death is not definitely known and possibly related to an industrial injury or occupational disease.

(j) Repeated failure to recognize emotional and social factors impeding recovery of a worker who is being treated under the Industrial Insurance Act.

(k) Repeated unreasonable refusal to comply with the recommendations of board certified or qualified specialists who have examined a worker.

(l) Repeated use of:

(i) Treatment of controversial or experimental nature;

(ii) Contraindicated or hazardous treatment; or

(iii) Treatment past stabilization of the industrial condition or after maximum curative improvement has been obtained.

(m) Declaration of mental incompetency by a court or other tribunal.

(n) Failure to comply with the applicable code of professional conduct or ethics.

(o) Failure to inform the department of any disciplinary action issued by order or formal letter taken against the provider's license to practice.

(p) The finding of any peer group review body of reason to take action against the provider's practice privileges.

(q) Misrepresentation or omission of any material information in the application for authorization to treat workers, chapter 51.04 RCW. (((~~chapter 51.04 RCW.~~)))

(5) If the department finds reason to take corrective action, the department may also order one or more of the following:

(a) Recoupment of payments made to the provider, including interest, chapter 51.04 RCW; (((~~chapter 51.04 RCW.~~)))

(b) Denial or reduction of payment;

(c) Assessment of penalties for each action that falls within the scope of subsection (4) (a) through (q) of this section, chapter 51.48 RCW; (((~~chapter 51.48 RCW.~~)))

(d) Placement of the provider on a prepayment review status requiring the submission of supporting documents prior to payment;

(e) Requirement to satisfactorily complete remedial education courses and/or programs; and

(f) Imposition of other appropriate restrictions or conditions on the provider's privilege to be reimbursed for treating workers under the Industrial Insurance Act.

(6) The department shall forward a copy of any corrective action taken against a provider to the applicable disciplinary authority.

AMENDATORY SECTION (Amending WSR 08-24-047, filed 11/25/08, effective 12/26/08)

WAC 296-20-025 ((~~Initial~~)) Initiating treatment and ((~~report of accident~~)) submitting a claim for benefits. ((~~It is the responsibility of~~)) (1) Worker's responsibility: The worker ((~~to~~)) must notify the ((~~practitioner~~)) provider when the worker has reason to believe his/her injury or ((~~condition~~)) illness is ((~~industrial in nature. Conversely, if the attending doctor discovers a~~)) work related. If treatment beyond the initial office or emergency room visit is needed, the worker must seek treatment from a network provider.

(2) Provider's responsibility: The provider must notify the worker if he/she identifies an injury, illness, or condition which he/she has reason to believe((~~s to be~~)) is work related ((~~or has reason to believe an injury is work related, he must so notify the worker~~)).

Once such determination is made by either the ((~~claimant~~)) worker or the attending ((~~doctor~~)) provider, a report of ((~~accident~~)) the injury or illness must be filed with the department or self-insurer.

Failure to comply with this responsibility can result in penalties as outlined in RCW 51.48.060.

((~~It is the practitioner's responsibility to~~)) (3) Additional provider responsibilities: The provider must ascertain whether he/she is the first attending ((~~practitioner. If so, he will take the following action:~~

(~~1~~)) provider and give emergency treatment.

((~~(2)~~)) The provider must immediately complete and forward ((~~the~~)) a report of ((~~accident,~~)) the injury or illness to the department ((~~and the employer or self-insurer.~~)) and instruct and ((~~give assistance to~~)) assist the injured worker in completing his/her portion of the report of ((~~accident~~)) the injury or illness. In filing a claim, the following information is necessary so there is no delay in adjudication of the claim or payment of compensation.

(a) Complete history of the ((~~industrial~~)) work-related accident or exposure.

(b) Complete listing of positive physical findings.

(c) Specific diagnosis with ICD-9-CM, or most current version as updated, code(s) and narrative definition relating to the injury.

(d) Type of treatment rendered.

(e) Known medical, emotional or social conditions which may influence recovery or cause complications.

(f) Estimate time-loss due to the injury or illness.

(g) Initial office and emergency room visit services may be performed by a network or nonnetwork provider. Services that are bundled with those performed during the initial visit, with no additional payment being due (as defined in WAC 296-20-01002) are part of the initial visit.

((~~(3) If~~)) (h) When the ((~~patient remains under his care~~)) worker needs treatment beyond the initial office or emergency room visit, the network provider continues with necessary treatment in accordance with medical aid rules. If the provider is not enrolled in the provider network and the injured worker requires additional treatment, the provider will either:

(i) Apply for the provider network (if eligible) at the time he/she files the worker's report of accident; or

(ii) Refer the injured worker to a network provider of the worker's choice.

(4) If the ((~~practitioner~~)) provider is *not* the original attending ((~~doctor~~)) provider, he/she should question the injured worker to determine whether a report of accident has been filed for the injury or condition. If no report of accident has been filed, it should be completed immediately and forwarded to the department or self-insurer, as the case may be, with information as to the name and address of original ((~~practitioner~~)) provider if known, so that he/she may be contacted for information if necessary. A worker must complete a request for transfer as outlined in WAC 296-20-065 if a report of accident has previously been filed((~~, it is necessary to have the worker complete a request for transfer as outlined in WAC 296-20-065, if~~)) and the worker and ((~~practitioner~~)) provider agree that a change in attending ((~~doctor~~)) provider is desirable or if the provider is not enrolled in the provider network.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-20-065 Transfer of ((~~doctors~~)) providers. For services or provider types where the department has established the provider network, the injured worker must select an attending provider from the provider network for all care beyond the initial visit. If the initial office or emergency room visit was completed with a nonnetwork provider and additional treatment is needed, the worker must transfer care to a network provider and promptly inform the department or self-insurer.

All transfers from one ((~~doctor~~)) network provider to another must be approved by the department or self-insurer. Normally transfers will be allowed only after the worker has been under the care of the attending ((~~doctor~~)) provider for sufficient time for the ((~~doctor~~)) provider to: Complete necessary diagnostic studies, establish an appropriate treatment regimen, and evaluate the efficacy of the therapeutic program.

Under RCW 51.36.010 the worker is entitled to free choice of treating ((~~doctor~~)) provider. Except as provided under subsections (1) through (7) of this section, no reasonable request for transfer to a network provider will be denied. The worker must be advised when and why a transfer is denied.

When a transfer is approved, the new attending ((~~doctor~~)) provider must be provided with a copy of the worker's treatment record by the previous attending ((~~doctor~~)) provider. X rays in the possession of the previous attending ((~~doctor~~)) provider must be immediately forwarded to the new attending ((~~doctor~~)) provider for his or her retention as long as the worker remains under his or her care. Copies of X rays and other records may be provided in lieu of originals.

The department or self-insurer reserves the right to require a worker to select another ((~~doctor~~)) provider or specialist for treatment, under the following conditions:

(1) When more conveniently located ((~~doctors~~)) providers, qualified to provide the necessary treatment, are available.

(2) When the attending ((~~doctor~~)) provider fails to cooperate in observance and compliance with the department rules.

(3) In time loss cases where reasonable progress towards return to work is not shown.

(4) Cases requiring specialized treatment, which the attending ((~~doctor~~)) provider is not qualified to render, or is outside the scope of the attending ((~~doctor's~~)) provider's license to practice.

(5) Where the department or self-insurer finds a transfer of ((~~doctor~~)) provider to be appropriate and has requested the worker to transfer in accordance with this rule, the department or self-insurer may select a new attending ((~~doctor~~))

provider if the worker unreasonably refuses or delays in selecting another attending ((~~doctor~~)) provider.

(6) In cases where the attending ((~~doctor~~)) provider is not qualified to treat each of several accepted conditions. This does not preclude concurrent care where indicated. See WAC 296-20-071.

(7) No transfer will be approved to a consultant or special examiner without the approval of the attending ((~~doctor~~)) provider and the worker.

Transfers will be authorized for the foregoing reasons or where the department or self-insurer in its discretion finds that a transfer is in the best interest of returning the worker to a productive role in society.

When a worker's care is transferred to another ((~~doctor~~)) provider each ((~~doctor~~)) provider must submit a separate bill to the department or self-insurer for their portion of the care. Payment will be made at rates determined by department policy.

AMENDATORY SECTION (Amending WSR 90-04-057, filed 2/2/90, effective 3/5/90)

WAC 296-20-075 Hospitalization. (1) Hospitalization will be paid for proper and necessary medical treatment of the accepted condition(s). The department may develop and implement utilization management criteria which will be used to review inpatient hospital admissions. Reimbursement for hospitalization is limited to proper and necessary care for an accepted condition. Failure to comply with these criteria may result in delayed or reduced reimbursement to the provider as allowed under chapter 51.48 RCW. Ward or semi-private accommodations will be paid, unless the worker's condition requires special care.

(2) Discharge from the hospital shall be at the earliest date possible consistent with proper health care. If additional treatment is needed, discharge planning must include referral to a network provider. If transfer to a convalescent center or nursing home is indicated, prior arrangements should be made with the department or self-insurer. See WAC 296-20-091 for further information. The department may designate those diagnostic and surgical procedures which will be reimbursed only if performed in an outpatient setting. When procedures so designated must be performed in an inpatient setting for reasons of medical necessity, prior authorization must be obtained.

AMENDATORY SECTION (Amending WSR 00-09-078, filed 4/18/00, effective 7/1/00)

WAC 296-20-12401 ((~~Provider~~)) Application process for providers outside the scope of the provider network. For providers or services not subject to the health care provider network requirements, including treatment at the initial office or emergency room visit, a provider must obtain a provider account number from the department.

(1) **How can a provider obtain a provider account number from the department?** In order to receive a provider account number from the department, a provider must:

- Complete a provider application;
- Sign a provider agreement;
- Provide a copy of any practice or other license held;
- Complete, sign and return a Form W-9; and
- Meet the department's provider eligibility requirements as cited in the department's rules.

Notes: A provider account number is required to receive payment from the department, but is not a guarantee of payment for services.
Self-insured employers may have additional requirements for provider status.

(2) **Provider account status definitions.**

- Active - Account information is current and provider is eligible to receive payment.
- Inactive - Account is not eligible to receive payment based on action by the department or at provider request. These accounts can be reactivated.
- Terminated - Account is not eligible to receive payment based on action by the department or at provider request. These accounts can not be reactivated.

(3) **When may the department inactivate a provider account?** The department may inactivate a provider account when:

- There has been no billing activity on the account for eighteen months; or
- The provider requests inactivation; or
- Provider communications are returned due to address changes; or
- The department changes the provider application or application procedures; or
- Provider does not comply with department request to update information.

(4) **When may the department terminate a provider account?** The department may terminate a provider account when:

- The provider is found ineligible to treat per department rules; or
- The provider requests termination; or
- The provider dies or is no longer in active business status.

(5) **How can a provider reactivate a provider account?** To reactivate a provider account, the provider may call or write the department. The department may require the provider to update the provider application and/or agreement or complete other needed forms prior to reactivation. Account reactivation is subject to department review.

If a provider account has been terminated, a new provider application will be required.

WSR 12-03-094
PROPOSED RULES
COMMUNITY COLLEGES OF SPOKANE

[Filed January 17, 2012, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-23-103.

Title of Rule and Other Identifying Information: WAC 132Q-07-060 Trespass.

Hearing Location(s): CCS Board of Trustees Meeting, Institute for Extended Learning Lodge, 3305 West Fort George Wright Drive, Spokane, WA, on February 21, 2012, at 8:30 a.m.

Date of Intended Adoption: February 21, 2012.

Submit Written Comments to: Kathleen Roberson, Community Colleges of Spokane, Mailstop 1006, P.O. Box 6000, Spokane, WA 99217-6000, e-mail Kathleen.Roberson @ccs.spokane.edu, fax (509) 434-5275, by February 15, 2012.

Assistance for Persons with Disabilities: Contact Kathleen Roberson by February 15, 2012, (509) 434-5275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend and clarify the parameters for a no trespass notice.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: Community Colleges of Spokane, governmental.

Name of Agency Personnel Responsible for Drafting: Anne Tucker, Public Information Officer, Suite 139, 501 North Riverpoint Boulevard, Spokane, WA 99202, (509) 434-5109; Implementation: Chief Student Services Officers, Terri McKenzie, Spokane Community College, Room 105, Building 50, 1810 North Greene Street, Spokane, WA, (509) 533-7015, Alex Roberts, Spokane Falls Community College, Room 150, Building 17, 3410 West Fort George Wright Drive, Spokane, WA, (509) 533-3514, and Amy Lopes-Wasson, Institute for Extended Learning, Room 245, 2917 West Fort George Wright Drive, Spokane, WA, (509) 279-6045; and Enforcement: College Presidents and IEL CEO, Joe Dunlap, Spokane Community College, Room 110, Building 50, 1810 North Greene Street, Spokane, WA, (509) 533-7042, Pam Praeger, Spokane Falls Community College, Room 105, Building 1, 3410 West Fort George Wright Drive, Spokane, WA, (509) 533-3535, and Scott Morgan, Institute for Extended Learning, Room 248, Magnuson, 2917 West Fort George Wright Drive, Spokane, WA, (509) 279-6040.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact.

A cost-benefit analysis is not required under RCW 34.05.328. Community Colleges of Spokane is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

January 17, 2012
Kathleen Roberson
Executive Assistant
to the CFO

AMENDATORY SECTION (Amending WSR 03-18-021, filed 8/25/03, effective 9/25/03)

WAC 132Q-07-060 Trespass. The appropriate president or designee of the college in the instance of any event that is determined to be disruptive of order, impedes the movement of vehicles or persons; or threatens to disrupt the movement of persons from college facilities or grounds, shall have the power and authority to:

(((~~(a)~~))) (1) Give notice against trespass by any manner provided for by law, to any person(s), or group against whom the privilege has been withdrawn or who have been prohibited from entering on or remaining upon any or all portions of a college facility; or

(((~~(b)~~))) (2) Prohibit the entry of, or withdraw the privilege of a person(s) or any group to enter or remain on all or any portion of a college facility or the entire college district; or

(((~~(c)~~))) (3) Order any person(s), or group to leave or vacate all or any portion of a college facility or grounds.

Any student or nonstudent who shall disobey a lawful order given by the president, or designee, pursuant to the requirements ((~~of subsection (1)~~)) of this section, shall be subject to disciplinary action and/or referred to law enforcement for possible criminal charges.

WSR 12-03-095
PROPOSED RULES
COMMUNITY COLLEGES OF SPOKANE

[Filed January 17, 2012, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-23-104.

Title of Rule and Other Identifying Information: WAC 132Q-02-340 Definitions.

Hearing Location(s): CCS Board of Trustees Meeting, Institute for Extended Learning Lodge, 3305 West Fort George Wright Drive, Spokane, WA, on February 21, 2012, at 8:30 a.m.

Date of Intended Adoption: February 21, 2012.

Submit Written Comments to: Kathleen Roberson, Community Colleges of Spokane, Mailstop 1006, P.O. Box 6000, Spokane, WA 99217-6000, e-mail Kathleen.Roberson @ccs.spokane.edu, fax (509) 434-5275, by February 15, 2012.

Assistance for Persons with Disabilities: Contact Kathleen Roberson by February 15, 2012, (509) 434-5275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend and clarify the definition of student directory information.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: Community Colleges of Spokane, governmental.

Name of Agency Personnel Responsible for Drafting: Anne Tucker, Public Information Officer, Suite 139, 501 North Riverpoint Boulevard, Spokane, WA 99202, (509) 434-5109; Implementation: Chief Student Services Officers, Terri McKenzie, Spokane Community College, Room 105, Building 50, 1810 North Greene Street, Spokane, WA, (509)

533-7015, Alex Roberts, Spokane Falls Community College, Room 150, Building 17, 3410 West Fort George Wright Drive, Spokane, WA, (509) 533-3514, and Amy Lopes-Wasson, Institute for Extended Learning, Room 245, 2917 West Fort George Wright Drive, Spokane, WA, (509) 279-6045; and Enforcement: College Presidents and IEL CEO, Joe Dunlap, Spokane Community College, Room 110, Building 50, 1810 North Greene Street, Spokane, WA, (509) 533-7042, Pam Praeger, Spokane Falls Community College, Room 105, Building 1, 3410 West Fort George Wright Drive, Spokane, WA, (509) 533-3535, and Scott Morgan, Institute for Extended Learning, Room 248, Magnuson, 2917 West Fort George Wright Drive, Spokane, WA, (509) 279-6040.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact.

A cost-benefit analysis is not required under RCW 34.05.328. Community Colleges of Spokane is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

January 17, 2012
Kathleen Roberson
Executive Assistant
to the CFO

AMENDATORY SECTION (Amending WSR 11-20-022, filed 9/23/11, effective 10/24/11)

WAC 132Q-02-340 Definitions. The following definitions shall apply in interpreting these regulations:

(1) Directory information: Information contained in an educational record of a student that would not be generally considered harmful or an invasion of the privacy if disclosed. It includes, but is not limited to: The student's name, ((~~address, telephone listing, electronic mail address, photograph, date and place of birth,~~)) major field of study, dates of attendance, grade level, enrollment status (e.g., full-time or part-time), participation in officially recognized ((~~activities and~~)) sports, weight and height of members of athletic teams, degrees, honors and awards received((~~, and the most recent educational agency or institution attended by the student~~)).

(2) Educational record: Those records, except as provided otherwise in (b) of this subsection, directly related to a student and maintained by the college or a party acting for the college.

(a) Education records include, but are not limited to:

(i) Official transcripts of course taken and grade received; records relating to prior educational experience; and admission records;

(ii) Tuition and payment records;

(iii) Student disciplinary records;

(iv) Course records (e.g., examinations, term papers, essays, etc.);

(v) Employment records based on student status (e.g., work study).

(b) Educational records do not include:

(i) Records of instruction, supervisory, and administrative personnel and educational personnel which are in the sole possession of the originator and which are not accessible or revealed to any other person except a substitute or designee;

(ii) Records created and maintained by campus security for law enforcement purposes;

(iii) In the case of persons who are employed by an educational agency or institution, but who are not in attendance at such agency or institution, records made and maintained in the normal course of business, which relate exclusively to such person's employment, are not available for use for any other purpose;

(iv) Records containing medical or psychological information are not available to anyone other than the individual(s) providing treatment; however, such records may be personally reviewed by a physician or other appropriate professional upon the student's written consent.

(3) Legitimate educational interest: If the information requested by the school official is necessary for the official to perform a task specified in his/her position description or contract agreement including: The performance of a task related to a student's education; the performance of a task related to the discipline of a student; the provision of a service or benefit related to the student or student's family, such as health education, counseling, advising, student employment, financial aid, or other student service related assistance; the maintenance of the safety and security of the campus; and/or the provision of legal assistance regarding a student matter.

(4) Parent: Defined as a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(5) Personal identifiable information: This includes, but is not limited to: Student's name, the name of the student's parent or other family member; the address of the student or the student's family; a personal identifier such as the student's Social Security number or student identification number; a list of personal characteristics that would make the student's identity easily traceable; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

(6) Record: Any information recorded in any way, including, but not limited to: Handwriting, print, computer media, video or audio media, microfilm and microfiche.

(7) School official: All of the following who act in the student's educational interests within the limitations of their need to know:

(a) A person employed by Community Colleges of Spokane in an administrative, supervisory, academic, research, support staff, law enforcement or health care service position;

(b) A person serving on the CCS board of trustees;

(c) A student serving on an official CCS committee or assisting another school official in fulfilling their professional responsibilities (examples include, but are not limited to, service on a disciplinary committee and work study students); and

(d) A contractor, consultant, volunteer or other party with whom CCS has contracted to provide a service and/or to assist another school official in conducting official business (examples include, but are not limited to: An attorney, an auditor, a collection agency, or the National Student Clear-

inghouse, an agency which acts as a clearinghouse for student loan deferment reporting).

(8) Student: Any person, regardless of age, who is or has been officially registered in attendance at CCS at any location at which CCS offers programs/courses with respect to whom CCS maintains educational records.

WSR 12-03-116
WITHDRAWAL OF PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT

(By the Code Reviser's Office)

[Filed January 18, 2012, 8:01 a.m.]

WAC 357-31-535, proposed by the office of financial management in WSR 11-14-079 appearing in issue 11-14 of the State Register, which was distributed on July 20, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-03-117
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-23—Filed January 18, 2012, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-21-096.

Title of Rule and Other Identifying Information: Suitability in the sale of annuities.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, http://www.insurance.wa.gov/about/directions.shtml, on February 21, 2012, at 9:00 a.m.

Date of Intended Adoption: February 27, 2012.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail kacys@oic.wa.gov, fax (360) 586-0139, by February 20, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by February 20, 2012, TTY (360) 586-0241, or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to clarify the requirements for confirming that an annuity product is suitable for the customer.

Reasons Supporting Proposal: The proposed rule updates the rules regarding disclosures and suitability of sales of annuities based on the National Association of Insurance Commissioner's model regulation #275 adopted in April 2010.

Statutory Authority for Adoption: RCW 48.02.060, 48.23.015(8).

Statute Being Implemented: RCW 48.23.015.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7041; Implementation: John Hamje, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule directly affects only issuers of annuities and insurance producers who sell annuities.

Only one of the current domestic issuers of annuities meets the definition of a small business under the law; that insurer currently issues annuities in other states (California and Oregon) whose rules are very similar. No small business economic impact statement (SBEIS) is required with regard to this domestic insurer because adoption of these proposed rules would not represent a significant new business expense but instead will require only replication of business practices, forms and training in Washington state that is already in existence in that company's primary market.

Insurance producers tend to be smaller and many meet the definition of small businesses under the law. The cost of this proposed rule change to producers is minimal. The four hour training which would be required represents only 0.2 percent of the hours typically worked in a year; the record-keeping requirement in proposed WAC 284-23-390(6) is also estimated to be very small, probably adding one page with three statements to be presented to and, when appropriate under these proposed rules, signed by a consumer purchasing an annuity. These projected costs fall below the minimal cost threshold for an SBEIS.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

January 18, 2011
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-17-265 Sales of annuities—Insurance producer training. (1) A person may not sell, solicit, or negotiate the sale of an annuity product unless he or she is appropriately licensed as an insurance producer and has successfully completed the annuity suitability training that meets the requirements of this section.

(2)(a) After March 29, 2012, prior to selling, soliciting, or negotiating the sale of annuity products, all insurance producers must complete a one-time, four-hour training course approved by the commissioner and provided by an insurance education provider approved in this state.

(b) Insurance producers who hold a life line of authority on March 29, 2012, and who desire to sell annuities must complete the requirements of this section by September 29, 2012.

(c) Persons who obtain a life insurance line of authority on or after March 29, 2012, may not sell, solicit, or negotiate the sale of an annuity product until the annuity training course has been completed.

(3)(a) The annuity suitability training required under this section shall include information on the following topics:

(i) The types of annuities and various classifications of annuities;

(ii) Identification of the parties to an annuity;

(iii) How fixed, variable, and indexed annuity contract provisions affect consumers;

(iv) The application of income taxation of qualified and nonqualified annuities;

(v) The primary uses of annuities; and

(vi) Appropriate sales practices, replacement, and disclosure requirements.

(b) The training required in this section must be sufficient to qualify for at least four continuing education credits.

(c) The training required in this section may be completed by either classroom instruction or self-study in accordance with WAC 284-17-220 through 284-17-256.

(d) The insurance producer education required by this section must not include training that is issuer or company product specific or includes any sales or marketing information and materials.

(e) Approved providers offering the annuity education required by this section must administer the course, issue certificates of completion, report completed training to the commissioner, and maintain records as required by WAC 284-17-270 through 284-17-310.

(4)(a) Resident insurance producers that complete the required training of this section and which are approved in this state may count those credits toward fulfillment of their Washington CE requirement.

(b) A resident or nonresident producer completing the required training of this section in another state which has adopted the annuity suitability requirement shall be deemed as satisfying this state's requirement as required by WAC 284-17-224.

(c) If a resident insurance producer wishes to apply course credits for the required annuity suitability training offered in another state and the course is not otherwise approved for continuing education credit in this state, the training may qualify for individual course credit subject to WAC 284-17-244.

(5)(a) Each insurer that has annuity products approved for sale in this state must:

(i) Certify that each of the insurers' producers currently engaged in the sale, solicitation, or negotiation of the sale of annuity products has completed the required training of this section by September 29, 2012; and

(ii) Certify annually on or before March 31st that each of the insurers' new producers since September 29, 2012, engaged in the sale, solicitation, or negotiation of the sale of annuity products has completed the required training of this section.

(b) The certification must be sent via e-mail to the licensing and education program in the commissioner's office. A form for this purpose is available on the commissioner's web site www.insurance.wa.gov.

(6) Insurance producers who have completed the annuity suitability training requirements of this section in a state other than Washington which has adopted the annuity suitability requirement prior to March 29, 2012, are deemed to have satisfied the training requirements of this section.

SUITABILITY IN ANNUITY TRANSACTIONS

NEW SECTION

WAC 284-23-390 Duties of insurers and insurance producers. (1) For purposes of this section, "suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and needs, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.

(2) In addition to the requirements in RCW 48.23.015, insurers and insurance producers must have reasonable grounds to believe the following requirements in recommending and executing a purchase or exchange of an annuity:

(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(b) The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;

(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

(3) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose

existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders, and similar product enhancements;

(b) The consumer would benefit from product enhancements and improvements; and

(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.

(4) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(5) An insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(6) An insurer's issuance of an annuity subject to subsection (2) of this section must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(7) An insurance producer or, where no insurance producer is involved, the responsible insurer representative must at the time of sale:

(a) Make a record of any recommendation subject to this section;

(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(8) In addition to the requirements in RCW 48.23.015(4) an insurer must:

(a) Maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

(b) Establish standards for insurance producer product training and must maintain reasonable procedures to require its insurance producers to comply with the requirements of WAC 284-17-265;

(c) Provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(d) Maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) Maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subsection (8)(e) prevents an insurer from complying with this subsection (8)(e) by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(f) Annually provide a report to senior management, including to the senior manager responsible for audit functions, which details the review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(9)(a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under RCW 48.23.015(4). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to RCW 48.23.015(6) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with (b) of this subsection.

(b) An insurer's supervision system must include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(10) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.