

WSR 22-24-087
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 6, 2022, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-126.

Title of Rule and Other Identifying Information: Reopening workers' compensation claims. WAC 296-20-097, under chapter 296-20 WAC, Medical aid rules.

Hearing Location(s): On January 11, 2023, at 9:00 a.m. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; join by phone +1 253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/u/kdFrdfe0fg>. The virtual meeting starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 14, 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 January 11, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Nathalie Penberthy, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email nathalie.penberthy@lni.wa.gov, by January 3, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on the legislation passed in 2022 adjusting the number of days prior to receipt of a reopening application for a workers' compensation claim, the department or self-insured employer can consider setting the effective date from 60 days up to 120 days when certain criteria are met. Due to the change in the statute, the existing rule, WAC 296-20-097 Reopenings, needs to be updated. Allowing the date to be set beyond 60 days up to 120 days may result in additional time-loss or medical benefits.

Reasons Supporting Proposal: The 2022 legislative session amended RCW 51.28.040 Application for change in compensation, by passing SHB 1902 to allow reopening of a workers' compensation claim up to 120 days prior to receipt of the application when certain criteria are met. Criteria that must be met is when the provider does not complete and file the application within 60 days of medical services **and** the worker submits the application within 30 days of medical services without medical completion. The worker must prove the application was received by the department or self-insurer. As a result of the legislation, WAC 296-20-097 Reopenings, needs to be amended to be consistent with the change in the statute.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Statute Being Implemented: RCW 51.28.040.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; 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 not required under RCW 34.05.328. This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because the rule making is proposing to adopt language, without material change, [to] a Washington statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

December 6, 2022

Joel Sacks

Director

OTS-4146.1

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

WAC 296-20-097 Reopenings. When a claim has been closed by the department or self-insurer by written order and notice for ((sixty)) 60 days, submission of a formal "application to reopen claim for aggravation of condition" form # F242-079-000 is ((necessary)) preferred. The department or self-insurer is responsible for customary charges for examinations, diagnostic studies, and determining whether or not time-loss is payable regardless of the final action taken on the reopening application. Reopening applications should be submitted immediately. When reopening is granted, the department or self-insurer can pay time loss and treatment benefits only for a period not to exceed ((sixty)) 60 days prior to date the application is received by the department or self-insurer. The 60 days may be extended up to 120 days consistent with RCW 51.28.040. Necessary treatment should not be deferred pending a department or self-insurer adjudication decision. However, should reopening be denied treatment costs become the financial responsibility of the worker.

[Statutory Authority: RCW 51.04.020, 51.04.030, and Title 51 RCW. WSR 08-24-047, § 296-20-097, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 51.32.190 and 51.32.210. WSR 90-22-054, § 296-20-097, filed 11/5/90, effective 12/6/90. Statutory Authority: RCW 51.04.020(4), 51.04.030, and 51.16.120(3). WSR 81-24-041 (Order 81-28), § 296-20-097, filed 11/30/81, effective 1/1/82; WSR 81-01-100 (Order 80-29), § 296-20-097, filed 12/23/80, effective 3/1/81; Order 71-6, § 296-20-097, filed 6/1/71; Order 70-12, § 296-20-095 (codified as WAC 296-20-097), filed 12/1/70, effective 1/1/71. Formerly WAC 296-20-090.]