

**WSR 23-18-077**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed September 5, 2023, 8:33 a.m.]

Title of Rule and Other Identifying Information: Chapter 296-62 WAC, General occupational health standards, Part R-1—Surgical smoke; WAC 296-62-510 Surgical smoke, 296-62-51010 Scope and application, 296-62-51020 Definitions, 296-62-51030 Surgical smoke program, 296-62-51040 Surgical smoke evacuation systems, 296-62-51060 Effective dates, and 296-62-51070 Appendix A.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to add a new part (R-1—Surgical smoke) to chapter 296-62 WAC, General occupational health standards. The new part is necessary for the department of labor and industries (L&I) to implement and enforce SHB 1779, passed by the Washington state legislature in 2022 (codified as RCW 49.17.500), which becomes effective January 1, 2024. SHB 1779 requires employers in hospitals and ambulatory surgical centers to adopt and adhere to policies covering the use of smoke evacuation systems to protect workers who may be exposed to surgical smoke.

The proposed rule adopts language from RCW 49.17.500 and provides clarity regarding which employers are covered under the scope. RCW 49.17.500 states the law does not apply to hospitals with fewer than 25 acute care beds in operation. L&I interprets "in operation" as "licensed" beds to make sure the rule applies to the correct facilities.

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

The rule making is needed to ensure hospitals and ambulatory surgical centers understand what requirements they must meet in regard to employee exposure to surgical smoke. The rule making is also needed for L&I to implement and enforce the requirements established by RCW 49.17.500.

Statutory Authority for Adoption: RCW 49.17.500.

Statute Being Implemented: RCW 49.17.500.

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: Tracy West, Tumwater, Washington, 360-902-6954; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates 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.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The new rule language being proposed under chapter 296-62 WAC adopts, without material change, the workplace safety and health requirements described under RCW 49.17.500.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO AJ Wagner, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504, phone 360-515-6220, fax 360-902-5619, email Arthur.Wagner@lni.wa.gov, AND RECEIVED BY November 6, 2023.

September 5, 2023  
Joel Sacks  
Director

**OTS-4625.2**

**PART R-1—SURGICAL SMOKE**

NEW SECTION

**WAC 296-62-510 Surgical smoke.**

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NEW SECTION

**WAC 296-62-51010 Scope and application.** (1) This section applies to surgical smoke exposures in hospitals, as defined in RCW 70.41.020, and ambulatory surgical facilities, as defined in RCW 70.230.010.

(2) Exposures to surgical smoke in other health care settings and exposures to similar smokes, particulates, vapors, and gases in other settings are covered under chapter 296-841 WAC, Airborne contaminants, and other applicable substance specific standards.

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NEW SECTION

**WAC 296-62-51020 Definitions.** The following definitions apply to this section:

**Smoke evacuation system.** Equipment designed to capture and neutralize surgical smoke at the point of origin, before the smoke makes contact with the eyes or the respiratory tract of occupants in the room. Smoke evacuation systems may be integrated with the energy generating device or separate from the energy generating device.

**Surgical smoke.** The by-product that results from contact with tissue by a tool that performs a surgical function using heat, laser, electricity, or other form of energy.

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NEW SECTION

**WAC 296-62-51030 Surgical smoke program.** (1) Employers must have a written surgical evacuation smoke program for any procedure that may generate surgical smoke.

(2) The surgical smoke evacuation program must have the following elements:

(a) Selection of surgical smoke evacuation systems.

(b) Required use of a surgical smoke evacuation system during any planned surgical procedure that is likely to generate surgical smoke which would otherwise make contact with the eyes or respiratory tract of the occupants of the room.

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NEW SECTION

**WAC 296-62-51040 Surgical smoke evacuation systems.** (1) Employers must control employee exposure to surgical smoke with surgical smoke evacuations systems, as feasible.

(2) Surgical smoke evacuation systems must capture and neutralize surgical smoke before it makes contact with the eyes or respiratory tracts of room occupants.

(a) Surgical smoke should be captured as close to the point of origin or point at which it is released from the body of the patient as feasible.

(b) The system must neutralize the smoke in a manner that protects the safety of room occupants by filtering, safely exhausting outside or to a building exhaust system, or otherwise treating the air in a manner that protects the safety and health of the room occupants and other employees.

Note: Subject to funding being made available by the legislature, between January 2, 2025, and June 30, 2025, hospitals that meet certain criteria may apply for reimbursement of up to \$1,000 per operating room for smoke evacuation systems that were purchased and installed on or before January 1, 2025. See **WAC 296-62-51070 Appendix A** for details.

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NEW SECTION

**WAC 296-62-51060 Effective dates.** (1) Chapter 296-62 WAC, Part R-1, is effective January 1, 2024.

(2) WAC 296-62-51030 and 296-62-51040 do not apply to the following establishments until January 1, 2025:

(a) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(b) Hospitals with fewer than 25 licensed acute care beds;

(c) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals; and

(d) Hospitals that qualify as a medicare dependent hospital.

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NEW SECTION

**WAC 296-62-51070 Appendix A—Nonmandatory—Reimbursement for smoke evacuation systems. Equipment cost reimbursement.**

(1) Subject to funding being made available by the legislature, the following hospitals may apply for reimbursement of costs for purchase and installation of surgical smoke evacuation equipment:

(a) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(b) Hospitals with fewer than 25 licensed acute care beds;

(c) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals; and

(d) Hospitals that qualify as a medicare dependent hospital.

(2) Costs must be incurred by the hospital on or before January 1, 2025.

(3) Reimbursement is limited to \$1,000 for each operating room in the hospital.

(4) Reimbursement requests may be submitted from January 2, 2025, until April 30, 2025. If moneys in the reimbursement account are exhausted, no further requests will be processed.

(5) To apply for reimbursement, the hospital must follow the directions posted on the department website, <https://www.lni.wa.gov/>.

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