

WSR 23-23-164
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 21, 2023, 1:48 p.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: This rule making adds 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 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.

Citation of Rules Affected by this Order: New WAC 296-62-510, 296-62-51010, 296-62-51020, 296-62-51030, 296-62-51040, 296-62-51060, and 296-62-51070.

Statutory Authority for Adoption: RCW 49.17.500.

Adopted under notice filed as WSR 23-18-077 on September 5, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 21, 2023.

Joel Sacks
Director

OTS-4625.2

PART R-1—SURGICAL SMOKE

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

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.

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.

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.

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.

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/>.