

## WSR 21-24-098

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed December 1, 2021, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-141.

Title of Rule and Other Identifying Information: Long-term services and supports trust program (WA cares). Adding WAC 192-910-025 Election of coverage for federally recognized tribes.

Hearing Location(s): On January 6, 2022, at 9:00 a.m., Microsoft Teams. Join online, link available at [esd.wa.gov/newsroom/rulemaking/ltss](https://esd.wa.gov/newsroom/rulemaking/ltss); join by phone 564-999-2000, PIN 779405926#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after January 13, 2022.

Submit Written Comments to: April Amundson, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), by January 6, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email [Teckstein@esd.wa.gov](mailto:Teckstein@esd.wa.gov), by December 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new proposed rule implements section 7, chapter 112, Laws of 2021, of SHB 1323, as codified under RCW 50B.04.095. The bill, among other things, provides a pathway for federally recognized tribes to elect WA cares program coverage. The bill also requires ESD to adopt rules to implement the section. Consistent with the elective coverage administrative rules for tribes under the paid family and medical leave (PFML) program, the proposed rule says that any tribe that opts in to the program is considered an employer as that term is defined under the law, and that the tribe's employees are considered employees as that term is defined under the law.

Reasons Supporting Proposal: The proposed rule is necessary to implement portions of the WA cares program and provide guidance to federally recognized tribes that may be interested in electing program coverage.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.080, 50B.04.095.

Statute Being Implemented: RCW 50B.04.080, 50B.04.095.

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

Name of Proponent: ESD, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

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. The proposed rule is exempt under RCW 34.05.328 (5) (b) (v) and (c) (i) (C) because the rule is dictated by statute (RCW 50B.04.095) and is a procedural rule related to internal operations of the department.

RCW 50B.04.095 outlines conditions under which federally recognized tribes may elect WA cares program coverage. The rule is also a procedural rule that adopts policies related to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii). In addition, RCW 50B.04.080 requires the department, to the extent feasible, to use the

premium assessment, collection, and reporting procedures required for PFML under Title 50A RCW. The rule ensures that standards and procedures for tribes to opt in to the program are consistent with rules previously adopted for PFML.

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 rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The proposed rule is exempt under RCW 34.05.310 (4) (e) because the rule is dictated by statute. RCW 50B.04.095 outlines conditions under which federally recognized tribes may elect WA cares program coverage. In addition, RCW 50B.04.080 requires the department, to the extent feasible, to use the premium assessment, collection, and reporting procedures required for PFML under Title 50A RCW. The rule ensures that standards and procedures for tribes to opt in to the program are consistent with rules previously adopted for PFML.

December 1, 2021  
April Amundson  
Policy and Rules Manager  
Leave and Care Division

**OTS-3496.1**

NEW SECTION

**WAC 192-910-025 Election of coverage for federally recognized tribes.** (1) A federally recognized tribe that elects coverage under RCW 50B.04.095 is an employer as defined in RCW 50A.05.010 and is subject to all rights and responsibilities under Title 50B RCW.

(2) An employee of a federally recognized tribe that elects coverage under RCW 50B.04.095 is an employee as defined in RCW 50A.05.010 and is subject to all rights and responsibilities under Title 50B RCW.

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