WSR 26-09-141
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed April 22, 2026, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-21-062.

Title of Rule and Other Identifying Information: Adding new chapter 192-901 WAC, Program administration: WAC 192-901-001 Purpose and scope; and chapter 192-916 WAC, Out-of-state participation: WAC 192-916-005 How can an individual continue participating if they move out of Washington state?, 192-916-010 What happens after an individual applies for out-of-state participation?, 192-916-015 Reporting and premium payment requirements for out-of-state participation, 192-916-020 Cancellation of coverage for out-of-state participants, and 192-925-020 Can an individual designate a representative to act on their behalf?

Amending WAC 192-915-005 Election of coverage for self-employed persons, 192-930-005 Audit procedures, 192-940-005 Earning years to become a qualified individual, and 192-940-010 How will the department determine if someone is a qualified individual?

Hearing Location(s): On May 26, 2026, at 9:00 a.m., via Microsoft Teams at https://esd.wa.gov/about-us/who-we-are-and-what-we-do/rulemaking/long-term-services-and-supports-ltss-rulemaking; or join by phone 564-999-2000, PIN 939 667 004#.

Date of Intended Adoption: On or after June 1, 2026.

Submit Written Comments to: Janette Benham, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by May 26, 2026.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, email teckstein@esd.wa.gov, by May 19, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESD is proposing new rules and amendments regarding the long-term services and supports trust program (WA Cares fund). The rules outline requirements for out-of-state participation, provide an index of other state agency rules, update requirements for self-employed elective coverage, audits, qualified individual determinations, and clarify procedures for designated representatives.

Reasons Supporting Proposal: The proposed rules implement requirements for out-of-state participation under RCW 50B.04.180, give direction on where to find rules for other agencies responsible for portions of WA Cares fund program administration (department of social and health services and health care authority), add requirements for individuals to designate someone to act on their behalf, and make additional updates to clarify program requirements.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.050, 50B.04.090, and 50B.04.180.

Statute Being Implemented: RCW 50B.04.050, 50B.04.090, and 50B.04.180.

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, Olympia, WA, 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. WAC 192-901-001 is exempt under RCW 34.05.328 (5)(b)(iii) because the rule references other Washington state agency rules.

WAC 192-930-005 is exempt under RCW 34.05.328 (5)(b)(v) because it is explicitly and specifically dictated by RCW 50B.04.020 (4)(c).

WAC 192-940-005 and 192-940-010 are exempt under RCW 34.05.328 (5)(b)(v) because they are explicitly and specifically dictated by RCW 50B.04.050 and [50B.04.]180.

WAC 192-915-005 and 192-916-020 are exempt under RCW 34.05.328 (5)(b)(v) and (c)(ii). Portions of the rules are explicitly and specifically dictated by statute and portions are interpretive and set forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii). WAC 192-915-005 is dictated by RCW 50B.04.090. WAC 192-916-020 is dictated by RCW 50B.04.180.

WAC 192-925-020 is exempt under RCW 34.05.328 (5)(c)(i)(C) because it is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-916-005, 192-916-010, and 192-916-015 are exempt under RCW 34.05.328 (5)(b)(v) and (c)(i)(C). Portions of the rules are explicitly and specifically dictated by statute and portions are procedural that adopt a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii). Portions of the rules are dictated by RCW 50B.04.180.

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; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

	Proposed WAC Section and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 192-901-001 Purpose and scope.	RCW 19.85.025(4) - The rule does not affect businesses and provides informational references to other Washington state agency rules for program administration.
2.	WAC 192-915-005 Election of coverage for self-employed persons.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (RCW 50B.04.090).
3.	WAC 192-916-005 How can an individual continue participating if they move out of Washington state?	RCW 34.05.310 (4)(e) - The rule is dictated by statute (RCW 50B.04.180). RCW 19.85.025(4) - The rule does not affect businesses and only applies to individuals who would like to voluntarily continue participation in the program when moving out of Washington state.
4.	WAC 192-916-010 What happens after an individual applies for out-of-state participation?	RCW 34.05.310 (4)(e) - The rule is dictated by statute (RCW 50B.04.180). RCW 19.85.025(4) - The rule does not affect businesses and only applies to individuals who would like to voluntarily continue participation in the program when moving out of Washington state.

	Proposed WAC Section and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
5.	WAC 192-916-015 Reporting and premium payment requirements for out-of-state participation.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (RCW 50B.04.180). RCW 19.85.025(4) - The rule does not affect businesses and only applies to individuals who would like to voluntarily continue participation in the program when moving out of Washington state.
6.	WAC 192-916-020 Cancellation of coverage for out-of-state participants.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (RCW 50B.04.180). RCW 19.85.025(4) - The rule does not affect businesses and only applies to individuals who would like to voluntarily continue participation in the program when moving out of Washington state.
7.	WAC 192-925-020 Can an individual designate a representative to act on their behalf?	RCW 34.05.310 (4)(b) - The rule is related to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85-025(4) - The rule does not affect businesses and outlines how an individual may designate another individual to act on their behalf.
8.	WAC 192-930-005 Audit procedures.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (RCW 50B.04.020 (4)(c)).
9.	WAC 192-940-005 Earning years to become a qualified individual.	RCW 34.05.310 (4)(e) - The rule is dictated by statute (RCW 50B.04.050 and RCW 50B.04.180).
10.	WAC 192-940-010 How will the department determine if someone is a qualified individual?	RCW 34.05.310 (4)(e) - The rule is dictated by statute (RCW 50B.04.050 and 50B.04.180).

April 22, 2026
April Amundson
Policy and Rules Manager, ESPI
Leave and Care Programs

RDS-7112.1

Chapter 192-901 WAC
PROGRAM ADMINISTRATION

NEW SECTION

WAC 192-901-001 Purpose and scope. (1) Rules in Title 192 WAC related to the long-term services and supports trust program implement portions of the program administered by the employment security department as outlined in chapter 50B.04 RCW.

(2) Department of social and health services program rules can be found in chapter 388-116 WAC.

(3) Health care authority program rules can be found in chapter 182-600 WAC.

RDS-7113.1

AMENDATORY SECTION (Amending WSR 22-20-044, filed 9/28/22, effective 10/29/22)

WAC 192-915-005 Election of coverage for self-employed persons. (1) Self-employed persons as defined in RCW 50B.04.090 may elect coverage under Title 50B RCW.

(2) Coverage may only be elected beginning July 1, 2023, and before July 1, 2026, or within three years of becoming self-employed in Washington for the first time.

(3) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(4) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(5) A self-employed person who elects coverage must continue to pay premiums until such time that the individual retires from the workforce or is no longer self-employed.

(6) The self-employed person must file a notice with the department if the individual retires from the workforce or is no longer self-employed.

(7) The department may cancel elective coverage if the self-employed person fails to make required payments or file reports. If canceled, participation in the program ends and the individual is not entitled to receive benefits.

RDS-7114.1

Chapter 192-916 WAC
OUT-OF-STATE PARTICIPATION

NEW SECTION

WAC 192-916-005 How can an individual continue participating if they move out of Washington state? (1) An individual who has met requirements under RCW 50B.04.180 may elect to continue participation when establishing a primary residence outside of Washington.

(2) An individual who is retired from the work force must elect out-of-state participation to become an eligible beneficiary under RCW 50B.04.010.

(3) Out-of-state participation must be elected within one year of establishing a primary residence outside of Washington.

(4) An individual must submit an application to elect out-of-state participation. Applications will be available online or in another format approved by the department.

(5) An individual who has an active exemption may not elect out-of-state participation.

NEW SECTION

WAC 192-916-010 What happens after an individual applies for out-of-state participation? (1) The department will determine the individual's eligibility based on requirements outlined in RCW 50B.04.180.

(2) Wages earned and hours worked when the individual had an approved exemption do not count toward meeting the requirements to elect out-of-state participation.

NEW SECTION

WAC 192-916-015 Reporting and premium payment requirements for out-of-state participants. (1) Wages earned and hours worked that are not already subject to premium withholding and reporting by an employer under RCW 50B.04.080 must be reported to the department annually.

(2) Under RCW 50B.04.180, if the out-of-state participant did not work or earn wages, acceptable documentation of no work or earnings must be reported to the department annually until the age of 67. Acceptable documentation may include additional information outlined in subsection (6) of this section.

(3) Premiums, if assessed, must be paid to the department.

(4) Hours reported and premiums paid count toward qualifying for the benefit as outlined in chapter 192-940 WAC.

(5) Reports and premium payments must be submitted in a format and manner approved by the department.

(6) The department may request additional information, including copies of tax returns, bank records, or any other documentation deemed necessary by the department to verify or determine compliance with RCW 50B.04.180.

NEW SECTION

WAC 192-916-020 Cancellation of coverage for out-of-state participants. (1) Out-of-state participants may not withdraw from program coverage.

(2) Under RCW 50B.04.180, the department must cancel coverage if an out-of-state participant fails to make required premium payments or submit required reports.

(3) If canceled, participation in the program ends and the individual is not entitled to receive benefits.

RDS-7115.1

NEW SECTION

WAC 192-925-020 Can an individual designate a representative to act on their behalf? (1) The department may authorize another individual to act on an individual's behalf for the purposes of applica-

tions, determinations, and appeals under the department's authority in chapter 50B.04 RCW if:

(a) An individual designates an authorized representative by submitting written documentation or other information as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on an individual's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on an individual's behalf; or

(d) If an individual is unable to designate an authorized representative due to a serious health condition as defined in RCW 50A.05.010, another individual may represent that individual by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the individual's health care provider as defined in WAC 192-500-090 certifying that the individual is incapable of completing the administrative requirements required by the department and is unable to designate an authorized representative to act on their behalf; and

(ii) An affidavit or declaration authorized by chapter 5.50 RCW attesting to the responsibility to act in the individual's best interest.

(2) The department will terminate the authority given to the authorized representative:

(a) When the individual or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

RDS-7116.1

AMENDATORY SECTION (Amending WSR 22-20-044, filed 9/28/22, effective 10/29/22)

WAC 192-930-005 Audit procedures. (1) The department may inspect and audit employer files and records as needed to ensure compliance with Title 50B RCW. Audits may take place at the discretion of the department.

(2) Employers must provide all requested information to the department within 10 business days or a time frame agreed to by the department.

(3) The department may inspect and audit self-employed and out-of-state participant elective coverage documentation at intervals determined by the department.

(4) If the department discovers violations for the time frame being audited, the department may expand the audit to include prior and subsequent ((~~quarters~~)) reporting periods, up to the most recently completed ((~~calendar quarter~~)) reporting period.

RDS-7117.1

AMENDATORY SECTION (Amending WSR 25-05-068, filed 2/14/25, effective 3/17/25)

WAC 192-940-005 Earning years to become a qualified individual. (1) The department will determine years earned toward qualified individual status under RCW 50B.04.050 based on wages earned and hours worked in employment as reported under chapter 192-910 WAC ((~~or~~)), in covered self-employment under chapter 192-915 WAC, and as an out-of-state participant under chapter 192-916 WAC.

(2) Only hours worked in reportable employment ((~~or~~)), covered self-employment, and as an out-of-state participant will be considered when determining whether an individual has worked at least 500 hours each year.

(3) A year toward qualified individual status may be earned once an individual has accrued 500 hours in employment as reported under chapter 192-910 WAC ((~~or~~)), in covered self-employment as reported under chapter 192-915 WAC, and as an out-of-state participant under chapter 192-916 WAC.

(4) Wages and hours reported when an individual had an approved exemption do not count toward qualifying for the benefit.

AMENDATORY SECTION (Amending WSR 25-24-065, filed 12/1/25, effective 1/1/26)

WAC 192-940-010 How will the department determine if someone is a qualified individual? (1) Qualified individual status under RCW 50B.04.050 is determined as follows:

(a) An individual who has earned 10 years toward becoming a qualified individual will be eligible for the full benefit amount;

(b) An individual who, from the date of application for benefits, has earned three of the last six years toward becoming a qualified individual will qualify for the full benefit amount; or

(c) An individual born before January 1, 1968, who does not qualify under (a) or (b) of this subsection will qualify for one-tenth of the maximum program benefit amount for each earned year toward becoming a qualified individual.

(2) An individual who continues to work in employment ((~~or in~~)), covered self-employment, or as an out-of-state participant after qualifying for subsection (1) (b) or (c) of this section, or both, may be eligible to earn additional years toward becoming a qualified individual.

(3) An individual may not exceed the maximum program benefit amount under RCW 50B.04.060.

(4) An individual who has an approved exemption cannot become a qualified individual.