



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: December 01, 2021
TIME: 9:21 AM

WSR 21-24-098

Agency: Employment Security Department

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-13-141 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

Long-Term Services and Supports Trust Program (WA Cares)

Adding WAC 192-910-025 Election of coverage for federally recognized tribes.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 6, 2022	9:00 AM	Microsoft TEAMS Join online: link available at 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 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: April Amundson

Address: Employment Security Department, PO Box 9046 Olympia, WA 98507-9046

Email: rules@esd.wa.gov

Fax:

Other:

By (date) January 6, 2022

Assistance for persons with disabilities:

Contact Teresa Eckstein, State EO Officer

Phone: 360-480-5708

Fax:

TTY: 711

Email: Teckstein@esd.wa.gov

Other:

By (date) December 30, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The new proposed rule implements Section 7 of Substitute House Bill 1323, Chapter 112, Laws of 2021, 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 the Employment Security Department to adopt rules to implement the section. Consistent with the elective coverage administrative rules for tribes under the Paid Family and Medical Leave 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, RCW 50B.04.080, RCW 50B.04.095

Statute being implemented: RCW 50B.04.080, RCW 50B.04.095

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Employment Security Department, Leave and Care Division

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	April Amundson	Lacey, WA	360-485-2816
Implementation:	April Amundson	Lacey, WA	360-485-2816
Enforcement:	April Amundson	Lacey, WA	360-485-2816

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email: rules@esd.wa.gov
Other:

No: Please explain:

The proposed rule is exempt under RCW 34.05.328 (5)(b)(v) and (5)(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.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

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.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Date: December 1, 2021
Name: April Amundson
Title: Policy and Rules Manager, Leave and Care Division

Signature: 
