



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: November 19, 2021

TIME: 11:00 AM

WSR 21-24-018

Agency: Employment Security Department

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-07-059 ; 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) WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010(4)(b)(ii).

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 6, 2022	9:00 am	Zoom Meeting ID: 828 9254 8635 Passcode: 542603 Call in: (253) 215-8782	Join Zoom Meeting: https://us02web.zoom.us/j/82892548635?pwd=WnY3V212Yk1QMkdYcU1BQ2hnb2lsZz09

Date of intended adoption: January 14, 2022_ (Note: This is NOT the effective date)

Submit written comments to:

Name: Joshua Dye
Address: P.O. Box 9046, Olympia, WA 98507-9046
Email: rules@esd.wa.gov
Fax: 844-652-7096
Other:
By (date) January 5, 2022

Assistance for persons with disabilities:

Contact Teresa Eckstein
Phone: 360-507-9890
Fax: 360-586-4600
TTY: Relay 711
Email: teckstein@esd.wa.gov
Other:
By (date) December 29, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Engrossed Substitute Senate Bill 5061 (2021) provides, among other things, good cause to leave work when during a public health emergency, the claimant was unable to perform their work for the employer from the claimant's home; the claimant is able and available to perform, and can actively seek suitable work which can be performed for an employer from the claimant's home; and the claimant or another individual residing with the claimant is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor of a disease that is the subject of a public health emergency. ESSB 5061, Chapter 2, Laws of 2021, §10 (codified at RCW 50.20.050(2)(b)(xii)(C)(II)). ESSB 5061 (2021) also provides that during the weeks of a public health emergency, an unemployed individual may meet the availability

requirements of RCW 50.20.010(1)(c) if they are able and available to perform, and actively seeking suitable work which can be performed for an employer from the individual's home; and if the unemployed individual or another individual residing with the unemployed individual is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual has an underlying condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the subject of the public health emergency. Chapter 2, Laws of 2021, §8 (codified at RCW 50.20.010(4)(b)(ii)). Both provisions of Senate Bill 5061 direct the Employment Security Department to adopt rules specifying how it will verify a higher risk individual's underlying health condition. The proposed rules provide that a claiming individual obtain a certification from a health care provider that includes the provider's qualification and contact information as well as information sufficient to establish the underlying health condition.

Reasons supporting proposal: Pursuant to Engrossed Substitute Senate Bill 5061 (2021), the Department is required to verify the underlying health condition of higher risk individuals under RCW 50.20.010(4)(b)(ii) and RCW 50.20.050(2)(b)(xii)(C)(II). The proposed rules should be adopted because they adequately explain how the Department will undertake the verification process.

Statutory authority for adoption: RCW 50.20.010(4)(b)(ii) and RCW 50.20.050(2)(b)(xii)(C)(II) provide specific rulemaking authority for verifying underlying health conditions. RCW 50.12.010 and RCW 50.12.040 provide general rulemaking authority to the Employment Security Department.

Statute being implemented: RCW 50.20.010 and RCW 50.20.050

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: None.

Name of proponent: (person or organization) Employment Security Department

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

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Josh Dye	Olympia	360-890-3472
Implementation:	Julie Lord	Olympia	360-890-3635
Enforcement:	Julie Lord	Olympia	360-890-3635

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: Joshua Dye
Address: P.O. Box 9046, Olympia, WA 98507-9046

Phone: 360-890-3472

Fax:

TTY:

Email: Rules@esd.wa.gov

Other: <https://esd.wa.gov/newsroom/ui-rule-making/>

No: Please explain:

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)(c)
(Incorporation by reference)

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

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

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

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:

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.

The proposed rules do not create additional tax burden on employers.

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: November 19, 2021

Name: Dan Zeitlin

Title: Employment Security Policy Director

Signature:

