

Final Significance Analysis  
Title 50A RCW  
Paid Medical and Family Leave  
Phase Three

Contact email: [paidleave@esd.wa.gov](mailto:paidleave@esd.wa.gov)

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## Introduction

In 2017, the Washington State Legislature passed Substitute Senate Bill 5975 relating to Paid Family and Medical Leave (PFML). Substitute Senate Bill 5975 was codified as Title 50A RCW.

Title 50A RCW creates a statewide Paid Family and Medical Leave insurance program that provides for at least partial wage replacement when a qualified employee takes leave for an approved reason related to family or medical leave.

The legislation requires the state to develop rules implementing the program.

These rules are being developed by the Employment Security Department (department) and will be filed in multiple phases. This filing comprises rules developed in Phase Three, which covers procedures for employee application filing and clarifies terms related to benefit eligibility and application.

## Chapter 1: Describe the proposed rules, including a brief history of the issue, and explain why the proposed rules are needed.

**WAC 192-500-050 De facto parent.** *A “de facto parent” is limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in a child's life where the natural or legal parent consented to and fostered the parent-like relationship.*

Title 50A RCW refers to a “de facto parent” as an individual who is eligible to take family leave, but does not provide a definition of the terminology. To properly identify such individuals, the department determined that a definition was necessary.

**WAC 192-500-060 In loco parentis.** *An individual stands “in loco parentis” when the individual acts in place of a parent, intentionally takes over parental duties, and is responsible for exercising day-to-day care and control fulfilling the child’s physical and psychological needs.*

Title 50A RCW refers to an individual who stands “in loco parentis” as an individual who is eligible to take family leave, but does not provide a definition of the terminology. To properly identify such individuals, the department determined that a definition was necessary.

**WAC 192-500-070 Claim year.**

*(1) “Claim year” is the fifty-two week period beginning Sunday of the week of:*

*(a) The date of the birth or placement of a child; or*

*(b) The date of the filing of a complete and timely application for all other qualifying events.*

*(2) For applications that are backdated, the claim year is the fifty-two week period beginning Sunday of the week to which the application was backdated.*

*(3) An employee may only have one valid claim year at a time.*

The department determined that the establishment of a “claim year” was necessary to properly implement Title 50A RCW by creating a precise time period during which an initial claim for benefits is active. The claim year will be used to determine the time frame in which an employee can use an entitlement.

**WAC 192-500-080 Qualifying event.**

*A “qualifying event” is:*

*(1) For family leave, events described in RCW 50A.04.010(9).*

*(2) For medical leave, events described in RCW 50A.04.010(14).*

Many department rules refer to “qualifying events.” This specifies the meaning of the term where the context so dictates.

**WAC 192-500-090 Health care provider.**

*“Health care provider” means:*

- (1) A physician or an osteopathic physician who is licensed to practice medicine or surgery, as appropriate, by the state in which the physician practices;*
- (2) Nurse practitioners, nurse-midwives, midwives, clinical social workers, physician assistants, podiatrists, dentists, clinical psychologists, optometrists, and physical therapists licensed to practice under state law and who are performing within the scope of their practice as defined under state law by the state in which they practice;*
- (3) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the health care provider’s practice as defined under such law; or*
- (4) Any other provider permitted to certify the existence of a serious health condition under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017).*

In many cases, Title 50A RCW requires an employee to submit documentation from a health care provider to establish a serious health condition. While statute does offer a definition for the term, the department determined that statutory language was insufficient and additional clarifying language was necessary to establish who will be considered a “health care provider.”

**WAC 192-500-100 Salaried employee.**

- (1) A “salaried employee” is any employee who receives a fixed periodic compensation from an employer to be paid for hours worked full-time as defined by the employer.*
- (2) Employees that work less than full-time as defined by the employer are not considered a salaried employee for the purposes of Title 50A RCW.*

Statute requires employers to report 40 hours for “salaried employees.” To offer additional clarity to employers, many who have ‘part-time salaried employees’, the department determined that a definition of this term was necessary to ensure proper reporting.

**WAC 192-510-085 How will the department assess premiums when a conditional premium waiver expires?**

- (1) If an employee who is exempt from premiums under a conditional waiver works 820 hours in any period of four consecutive quarters, the waiver will be determined to have expired.*
- (2) Upon expiration of a conditional premium waiver, the department will assess and notify:*
  - (a) The employer of all the owed employer premiums; and*
  - (b) The employee of all the owed employee premiums.*
- (3) Payment will be due upon receipt of the assessment.*
- (4) Failure to pay the assessment by the required date will result in the accrual of interest under RCW 50A.04.140.*
- (5) Upon payment of the employee premiums, the employee will be credited for the hours worked and will be eligible for benefits under Title 50A RCW as if the premiums were originally paid.*
- (6) Nothing in this section prevents the employer from paying part or all of the employee’s share of the*

premiums.

Title 50A RCW allows for an employer and an employee who meets certain criteria to apply for a premium waiver. One of those criteria is that the employee is not employed in the state for 820 hours in a four- quarter period. If and when that does occur, all premiums are retroactively assessed and the waiver expires. This rule establishes the process the department will use to assess back premiums in the event of a waiver expiration.

**WAC 192-600-005 When must an employee provide notice to the employer for foreseeable leave?**

*(1)(a) An employee must provide the employer at least thirty days' written notice before paid family or medical leave is to begin if the need for the leave is foreseeable based on an expected birth, placement of a child, or planned medical treatment for a serious health condition.*

*(b) An employee must provide the employer written notice as soon as is practicable when thirty days' notice is not possible, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency.*

*(2) An employee must provide the employer written notice as soon as is practicable for foreseeable leave due to a qualifying military exigency, regardless of how far in advance such leave is foreseeable.*

*(3) Whether paid family or medical leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, written notice need only be given one time, but the employee must inform the employer as soon as is practicable if dates of the scheduled leave change, are extended, or were initially unknown.*

Title 50A RCW requires employees to provide sufficient notice to their employers before a claim will be approved. In situations of foreseeable leave, an employee must provide 30 days' notice to the employer. This rule establishes how the department will determine if given notice was sufficient.

**WAC 192-600-010 When must an employee provide notice for unforeseeable leave?**

*(1) When the need for leave is not foreseeable, an employee must provide written notice to the employer as soon as is practicable under the facts and circumstances of the particular situation.*

*(2) If the employee is unable to provide notice personally, written notice may be given by another responsible party, such as the employee's spouse, neighbor, or coworker.*

**Example 1:** *An employee's spouse is in a car accident and is taken to the emergency room. The employee would not be required to leave the spouse in the emergency room in order to report the absence while the spouse is receiving emergency treatment. The employee would be expected to provide written notice, such as an email, to the employer as soon as is practicable.*

**Example 2:** *An employee is in a car accident and is taken to the emergency room for emergency surgery. The employee's parent may provide written notice on behalf of the employee as soon as is practicable.*

Title 50A RCW requires employees to provide sufficient notice to their employers before a claim will be approved. In situations of unforeseeable leave, an employee must provide notice to the employer as soon as is practicable. This rule establishes how the department will determine if sufficient notice was given.

**WAC 192-600-015** What does “as soon as is practicable” mean for this chapter? *For the purposes of this chapter, “as soon as is practicable” means as soon as it is both possible and practical to provide notice, taking into account all of the facts and circumstances in the individual situation. When an employee becomes aware of a need for paid family or medical leave less than thirty days in advance, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.*

Title 50A RCW requires employees to provide sufficient notice to their employers before a claim will be approved. In situations of unforeseeable leave, an employee must provide notice to the employer as soon as is practicable. This rule establishes how the department will define “as soon as is practicable” for the purposes of approving a claim.

**WAC 192-600-020** What must an employee’s notice for leave to an employer include? *An employee must provide written notice to make the employer aware that the employee may need paid family or medical leave. The notice must contain at least the anticipated timing and duration of the leave. Written notice includes, but is not limited to, handwritten or typed notices, and all forms of written electronic communications such as text messages and email.*

Title 50A RCW requires employees to provide sufficient notice to their employers before a claim will be approved. This rule establishes the criteria of what this notice must include in order to be approved by the department.

**WAC 192-600-025** What happens if an employee fails to provide proper notice? *If the department determines that the employee failed to provide proper notice to the employer, the employee’s benefits will be denied for a period of time equal to the number of days that notice was insufficient. **Example:** If an employee should have provided 30 days’ notice for a qualifying event the employee was aware of 60 days in advance, but instead the employee provided notice 15 days prior to the scheduled leave, the department will deny paid family or medical leave benefits for 15 days. The employee is not required to file a new initial application for benefits. After the required 15 days, the employee may start receiving benefits upon proper filing of weekly claims if otherwise eligible.*

Title 50A RCW requires employees to provide sufficient notice to their employers before a claim will be approved. This rule establishes the process through which the department will delay the approval of a claim until the department can determine that sufficient notice was provided.

**WAC 192-610-005** How does an employee apply for benefits?

- (1) An employee may apply for paid family or medical leave benefits under the state plan by:
  - (a) Using the department’s online services;
  - (b) Contacting the paid family and medical leave customer care center by telephone; or
  - (c) Alternate methods authorized by the commissioner.
- (2) An employee who works for an employer with an approved voluntary plan must follow the

*application guidelines of the approved plan.*

This rule establishes the methods employees may use to file a claim with the department. This guidance is necessary to ensure workers understand how to apply for benefits and to ensure that the program is accessible.

**WAC 192-610-010 What information is an employee required to provide to the department when applying for benefits?**

- (1) When an employee submits an application for paid family or medical leave benefits, the employee must provide information sufficient for the department to determine eligibility for benefits. This information includes, but is not limited to, information identifying the employee, the type and anticipated duration of leave, as well as certification or documentation to validate the qualifying event.*
- (2) If an employee is in a claim year and has need for successive periods of benefits for the same qualifying event beyond what was originally approved, the employee must update the application.*
- (3) If an employee experiences a new qualifying event during a claim year, the employee must restart the claim and provide additional information required by the department before benefits can be paid.*

The department is required to establish benefit eligibility when an employee files a claim. Certain information must be provided by the employee for that determination to be made. This rule establishes what information the department will require in order to ensure accurate eligibility determinations and the proper payment of benefits.

**WAC 192-610-015 When will the employee be required to provide documentation or certification to the department?**

- (1) Any time an employee applies for paid family or medical leave benefits, the application must be supported by documentation or certification as required in Title 50A RCW and the rules adopted by the department.*
- (2) If an employee does not provide sufficient documentation or certification substantiating the employee's qualification for benefits, the department will deny benefits until sufficient documentation or certification substantiating the qualifying event is provided.*
- (3) The department may require the employee to provide additional documentation or certification to substantiate the qualification for benefits if:*
  - (a) The employee requests an extension of the leave originally planned;*
  - (b) Circumstances of the serious health condition change;*
  - (c) Information is provided to the department that the employee may no longer be qualified for benefits; or*
  - (d) Other circumstances cause the department to question the employee's qualification for benefits.*

This rule authorizes the department to seek additional information from the employee to ensure the assessment of initial and ongoing eligibility is properly made. This rule also clarifies that all applications for paid family or medical leave benefits must be supported as required by law, and states that that unsupported applications will be denied.



**WAC 192-610-020** What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition? *When leave is taken because of an employee's own serious health condition or the serious health condition of a family member, certification from a health care provider will be required. Certification must include the following:*

- (1) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice;*
- (2) The anticipated duration of leave;*
- (3) Other information as requested by the department to determine eligibility for the qualifying event; and either*
  - (a) For medical leave, information from a health care provider that the employee has a serious health condition; or*
  - (b) For family leave, information sufficient to establish that the family member has a serious health condition requiring physical or psychological care.*

In many cases, Title 50A RCW requires an employee to submit documentation from a health care provider to establish a serious health condition. This certification must be submitted with the initial claim for benefits and any subsequent application to extend an existing claim. This rule establishes the content of that certification in order to give the department enough information to determine eligibility.

**WAC 192-610-025** Documenting the birth or placement of a child for family leave. *When family leave is taken to bond with the employee's child after birth or placement, the department may request a copy of:*

- (1) The child's birth certificate;*
- (2) Certification from a health care provider;*
- (3) Court documents to show placement; or*
- (4) Other reasonable documentation to substantiate the qualifying event.*

This rule indicates the type of documentation the department may request from an employee seeking to take leave under Title 50A RCW for the birth or placement of a child.

**WAC 192-610-030** Documenting a military exigency for family leave. *When family leave is taken because of a qualifying military exigency, the employee will be required to provide documents or information such as:*

- (1) Active duty orders;*
- (2) The approximate dates in which leave will be needed; or*
- (3) Other information to substantiate the qualifying event.*

This rule indicates the type of documentation the department may request from an employee seeking to take leave under Title 50A RCW for a qualifying military exigency in order to verify the facts and circumstances to ensure accurate payment.

**WAC 192-610-035** Documenting a family relationship. *The department may request*

*documentation or information from the employee that is sufficient to establish the familial relationship for the purposes of benefit eligibility and program integrity.*

This rule authorizes the department to seek documentation establishing a familial relationship from an employee seeking to take leave for a family member under Title 50A RCW. This rule is needed to ensure proper benefit payment.

#### **WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?**

*Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.*

*(1) For the purpose of this section:*

*(a) (i) "Good cause" means factors that prevented an employee from applying for benefits prior to or at the time of need for paid leave such as a serious health condition, a period of incapacity, or a natural disaster.*

*(ii) The burden of proof is on the employee to provide all pertinent facts and evidence to the department to determine good cause. The evidence must show that the factors prevented the employee from applying for or claiming benefits when the qualifying event occurred and any subsequent duration in which the employee did not apply or claim for benefits. This evidence may include, but is not limited to, medical certification from a health care provider, evidence of a natural disaster, or other information required by the department.*

*(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.*

*(2) An employee who wants to backdate an application or weekly claim must file for benefits during the first week in which the factors that constitute good cause no longer exist.*

This rule establishes circumstances under which an employee may back date an application for benefits. The department will allow back dating if the employee is able to show good cause which provides flexibility for program applicants and ensures equity.

**WAC 192-610-045 May the department refuse to accept an employee's application, appeal, or petition?** *No employee or agent of the department may refuse to accept a properly-filed application or weekly claim for paid family or medical leave benefits, a signed appeal, or a petition for review by the commissioner related to any program administered by this department regardless of the employee or agent's opinion concerning its merits.*

This rule establishes that no employee of the department may refuse to accept an application, appeal, or petition without processing it to protect the public.

#### **WAC 192-610-050 How are typical workweek hours determined?**

*(1) For salaried employees, the number of hours worked in a week are assumed to be forty, regardless of how many hours are actually worked. Typical workweek hours are determined by*

*multiplying the number of weeks in the qualifying period the employee held the salaried position by forty, adding any other hours that were not salaried, if any, and then dividing that amount by fifty-two.*

*(2) For all other employees, typical workweek hours are determined by dividing the sum of all hours reported in the qualifying period by fifty-two.*

This rule clarifies the calculation the department will use to determine an employee's typical workweek hours for transparency purposes

**WAC 192-610-055 What is an employee's maximum benefit length?**

*The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a claim year.*

*(1) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a claim year. This leave may be extended to fourteen times the typical workweek hours during a claim year if the employee experiences a serious health condition with a pregnancy that results in a period of incapacity.*

*(2) An employee is not entitled to paid family or medical leave benefits under this chapter that exceeds a combined total of sixteen times the typical workweek hours during a claim year. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours during a claim year if the employee experiences a serious health condition with a pregnancy that results in a period of incapacity.*

This rule clarifies the maximum benefit length for the program participants. This clarity is needed for transparency and public knowledge and to ensure that the department is operating the program equitably for all participants.

**WAC 192-610-060 Will the employer be notified if an employee files an application for benefits?**

*(1) The department will send a notice to the employee's current employer(s), if applicable, when an employee files an application for paid family or medical leave benefits.*

*(2) The department may, when necessary, send a notice to the employee's most recent employer(s).*

*(3) Any employer that receives such a notice must respond to the department as indicated on the notice. If the employer does not reply within the provided time frame, the department will determine eligibility without input from the employer.*

When an employee submits an application for benefits to the department, the department will require certain information regarding employer notice, details of the qualifying event, etc. This rule addresses when the department will notify an employer to allow it the opportunity to contest the application.

**WAC 192-800-003 Designating an authorized representative.**

*(1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:*

*(a) An employee designates an authorized representative by submitting written documentation as required by the department;*

*(b) A court-appointed legal guardian with authority to make decisions on a person's behalf*

*submits documentation as required by the department;*

*(c) An individual designated as a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or*

*(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:*

*(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and*

*(ii) An affidavit or declaration authorized by RCW 9A.72.085 attesting to the responsibility to act in the employee's best interest.*

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

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

*(b) At the department's discretion.*

*(3) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.*

In the event that an employee is unable to act for themselves if they have a serious health condition, the department will allow an authorized representative to act on behalf of an employee for the purposes of Paid Family and Medical Leave. This rule establishes the process by which an authorized representative may be appointed.

## Chapter 2: Is a Significance Analysis required for these rules?

Rules requiring a significance analysis.

WAC Section	Section Title	Reason a Significance Analysis is Needed
WAC 192-610-020	What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition?	While the requirement of serious medical condition certification is set forth in statute, the extent of information required imposes a cost not specifically dictated by statute.

Rules not requiring a significant analysis.

The following rules do not require a Significance Analysis because they either:

1. Adopt, amend, or repeal: a) Any procedure, practice, or requirement relating to any agency hearings; b) Any filing or related process requirement for making application to an agency for a license or permit; or c) Any policy statement pertaining to the consistent internal operations of an agency (RCW 34.05.328(5)(c)(i));
2. Set forth the agency's interpretation of statutory provisions it administers, the violation of which does not subject a person to a penalty or sanction (RCW 34.05.328(5)(c)(ii) and (5)(a)(ii));
3. Adopt or incorporate by reference without material change federal statutes or regulations, Washington State statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule (RCW 34.05.328(5)(b)(iii));
4. Only correct typos, address or name changes, or clarify language without changing effect (RCW 34.05.328(5)(b)(iv));
5. That put forth content specifically and explicitly dictated by statute (RCW 34.05.328(5)(b)(v)); or
6. Are not "significant legislative rules" insofar as the proposed rule does not make significant amendments to a policy or regulatory program (RCW 34.05.328(5)(c)(ii)(C)).

WAC Section	Section Title
WAC 192-500-050	De facto parent.
WAC 192-500-060	In loco parentis.
WAC 192-500-070	Claim year.
WAC 192-500-080	Qualifying event.
WAC 192-500-090	Health care provider.
WAC 192-500-10	Salaried employee.

WAC 192-510-085	How will the department assess premiums when a conditional premium waiver expires?
WAC 192-600-005	When must an employee provide notice to the employer for foreseeable leave?
WAC 192-600-010	When must an employee provide notice for unforeseeable leave?
WAC 192-600-015	What does “as soon as is practicable” mean for this chapter?
WAC 192-600-020	What must an employee’s notice for leave to an employer include?
WAC 192-600-025	What happens if an employee fails to provide proper notice?
WAC 192-610-005	How does an employee apply for benefits?
WAC 192-610-010	What information is an employee required to provide to the department when applying for benefits?
WAC 192-610-015	When will the employee be required to provide documentation or certification to the department?
WAC 192-610-020	What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition?
WAC 192-610-025	Documenting the birth or placement of a child for family leave.
WAC 192-610-030	Documenting a military exigency for family leave.
WAC 192-610-035	Documenting a family relationship.
WAC 192-610-040	Can an employee backdate an application or a weekly claim for benefits?
WAC 192-610-045	May the department refuse to accept an employee’s application, appeal, or petition?
WAC 192-610-050	How are typical workweek hours determined?
WAC 192-610-055	What is an employee’s maximum benefit length?
WAC 192-610-060	Will the employer be notified if an employee files an application for benefits?
WAC 192-800-003	Designating an authorized representative.

### **Chapter 3:** Clearly state in detail the general goals and specific objectives of the statute that the rules implement.

WAC 192-610-020 What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition?

RCW 50A.04.035(1)(f) states that an application for Paid Family or Medical Leave benefits must provide “a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of the certification of a serious health condition.”

To implement this section of the law, it was necessary for the department to establish additional guidelines around the content of the certification so that eligibility could be established.

**Chapter 4:** Explain how the department determined that the rules are needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rules.

**WAC 192-610-020** What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition?

The department has proposed WAC 192-610-020 to provide guidance to both medical health professionals who will be completing the certification and to employees who will need to submit it to the department.

The content of the certification was discussed at length to minimize the burden on health care professionals and minimize costs incurred by them and those that may be passed on to the employee as a result.

Without rulemaking, inconsistencies may arise in the certifications that are provided. This could result in inaccurate or incomplete applications for benefits resulting in a delay or denial of benefits to employees who would otherwise qualify. The department would also incur additional administrative costs due to the need to review certifications of varying length and detail.



## Chapter 5: Explain how the department determined that the probable benefits of the rules are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

### Economic Impact of WAC 192-610-020

Health care providers:

To estimate the cost of providing a certification with the information specified by the proposed rule, we used a combination of Washington State occupational employment statistics information, data from interviews with health care providers, and data on businesses in the health care industry in Washington State.

The Employment Security Department produces occupational employment and wage estimates through a federal-state cooperative program that surveys a sample of more than 29,360 employers. Detailed estimates of number of employees and wages are produced for each 6-digit occupation code. Data included here are the most recent estimates available from May 2017 (2018 Release). Occupational groups included in this analysis were selected based on part or full inclusion in the list of health care providers in WAC 192-500-090 and are shown below.

SOC code	Occupational Title	WA Employment
19-3031	Clinical, Counseling, & School Psychologists	2,164
21-1022	Healthcare Social Workers	3,609
21-1023	Mental Health & Substance Abuse Social Workers	2,168
29-1021	Dentists, General	2,324
29-1022	Oral & Maxillofacial Surgeons	37
29-1041	Optometrists	737
29-1062	Family & General Practitioners	1,201
29-1063	Internists, General	306
29-1064	Obstetricians & Gynecologists	329
29-1065	Pediatricians, General	511
29-1066	Psychiatrists	542
29-1067	Surgeons	529
29-1069	Physicians & Surgeons, All Other	7,242
29-1071	Physician Assistants	2,315
29-1081	Podiatrists	128
29-1123	Physical Therapists	5,052
29-1161	Nurse Midwives	88

29-1171	Nurse Practitioners	3,111
29-1199	Health Diagnosing & Treating Practitioners, All Other	969
29-9099	Healthcare Practitioners & Technical Workers, All Other	951

The catch-all “Healthcare Practitioners & Technical Workers, All Other” are included because midwives are captured under that SOC Code and are explicitly named as a health care provider authorized to provide certification for PFML. In addition, two dental occupations (“all other specialties” and orthodontists) were excluded because of missing data.

From these occupational employment statistics (OES) data we calculate average wage cost for health care providers. While median is more typically used for wage estimates to account for the skew found in most wage distributions, the OES data cap percentile wages to be under \$100 per hour. To use median in this case, we would have to cap seven (about one-third) of the occupations listed above at under their true median wage. For those occupations that do report both average and median wages, most of these occupations have slightly higher average than median wages. In other words, this estimate can reasonably be interpreted as a high estimate, compared with what we would have obtained from the more typical measure of median wage used in similar analyses. Average wage across health care provider occupations, weighted by WA employment to account for relative size of occupations, is \$68.28 per hour.

Interviews were conducted with twelve health care providers to obtain information on how much time they believed writing a certification including the information required in the rule would take. These included a variety of health care professions, with focus on those types of providers likely to be providing certifications, including family & general practitioners, physician assistants, nurse practitioners, a midwife, chiropractor, clinical social worker, clinical psychologist, and dentist. Given similar responses across this group and no reason to believe this group of practitioners was systematically different than other practitioners (that is, no evidence for systematic bias), we used the time estimates provided by these interviews to inform our cost projections. These providers indicated that for clients/patients for whom they were providing ongoing treatment and thus should theoretically already have the needed information, the actual writing up of a notice/form that includes the minimal set of information proposed in this rule would take about fifteen minutes. In cases for which they needed more information from the client/patient, the department had follow-up questions, or for some other reason an additional appointment with the client/patient was necessary, it could take about an hour on average to provide the certification.

Putting the time estimates together with the occupational wage estimates, we estimate the typical cost per health condition certification to be between \$17.07 and \$68.28. The number of leaves estimated in the fiscal analysis for SSB5975 was 164,345. About 15 percent are expected to be for new child bonding, which would not necessitate a serious health condition certification, so for the current analysis of own health and family member health condition care leaves, we use a reduced estimate of 131,476 claims per year. This translates to a total yearly cost to health care provider businesses in the state of between \$2,244,376 and \$8,977,505. Using information from Department of Revenue on the number of businesses in Washington state engaged in Health Services<sup>1</sup> (21,577), the cost per health services business is between \$104.07 and \$416.02 per year.

The benefit of having health care provider certification – a necessary component of PFML benefit application eligibility determinations – outweighs this cost. The requirement to have a health care provider certify the serious health condition of an employee or employee’s family

<sup>1</sup> NAICS 621 (Ambulatory Health Care Services), 622 (Hospitals), 632 (Nursing and Residential Care Services)

member is specifically and explicitly delineated in statute. The department recognizes that this requirement puts a burden on health care providers and has worked with stakeholders to identify the minimal information necessary to require of certifications in this rule. In other words, while the department cannot eliminate the burden imposed on health care providers by statute, the certification content requirements specified in this rule have limited the burden by requiring the minimal set of information needed to make a benefit claim eligibility determination.

#### Employees:

For employees, the cost to obtain health care provider certification of their own or a family member's medical condition may include the financial and time cost of an appointment with the medical provider, if an additional exam is necessary to provide the required information. We expect that this cost of an additional visit to complete health condition certification will be borne by only a small portion of employees, outliers rather than the typical case, as the definition of a serious health condition in RCW 50A.04.010(19) includes that treatment by a health care provider has been necessary for the condition. The benefit of having the limited set of sufficient information on which to base a benefit eligibility determination outweighs the probable cost to a small portion of employees to obtaining this information. We also reiterate that the requirement to have health condition certification provided by a health care provider (as defined in RCW 50A.04.010(13)) is set by statute.

#### Department Justification for Rule

RCW 50A.04.035 requires certification of a serious health condition to be included in application for benefits. Without such a certification, benefit eligibility determination would not be possible for medical leave or leave to care for a family member experiencing a serious health condition. The rule defines what content is required in the certification and has intentionally been designed to require the minimally-necessary information for eligibility determinations.

**Chapter 6:** Identify alternative versions of the rule that were considered and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

WAC 192-610-020 What is required on the certification for medical leave or for family leave to care for a family member who has a serious health condition?

Specific content of the certification was thoroughly discussed with the Advisory Committee and participants at public hearings. The final rule was crafted to reflect the minimally-necessary information for eligibility determination.

Alternative versions included different sets of required data points, but were deemed insufficient to determine eligibility or overly-burdensome.

## Chapter 7: Conflicts with Federal or State law

None of the rules analyzed in this Significance Analysis conflict with Federal or State law.

## **Chapter 8: Performance impositions on private vs. public sectors**

Since all employers and employees, regardless of public or private sector employment status, are required to participate in Paid Family and Medical Leave, there is no evidence to suggest that any proposed rule will have a measurably different impact between the two sectors.

## **Chapter 9: Conflicts with Federal or State regulatory bodies**

None of the rules analyzed in this Significance Analysis conflict with any applicable Federal or State regulatory requirements.

## **Chapter 10: Coordination with Federal, State, or local laws**

There are no other Federal, State, or local laws applicable to the rules analyzed in this Significance Analysis.