CONCISE EXPLANATORY STATEMENT (CES)

Definition of "initial visit" in the implementation of Substitute Senate Bill 5801
(SSB 5801, Chapter 6, Laws of 2011)

Amended WACs

WAC 296-20-015	Who may treat
WAC 296-20-025	Initial treatment and report of accident
WAC 296-20-065	Transfer of doctors
WAC 296-20-075	Hospitalization
WAC 296-20-12401	Provider application process
WAC 296-14-400	Reopenings for benefits

I. Purpose of this rulemaking:

RCW 51.36.010, as amended by Substitute Senate Bill 5801 (SSB 5801, Chapter 6 Laws of 2011), directs the Department of Labor & Industries (L&I) to establish a statewide medical provider network to treat injured and ill workers. SSB 5801 also includes language about the "initial visit" and the availability of nonnetwork and network providers regarding the "initial visit." This rulemaking process is necessary to implement this portion of SSB 5801.

SSB 5801 states that "Once the provider network is established in the worker's geographic area, an injured worker may receive care from a nonnetwork provider only for an initial office or emergency room visit." This amended rule language clarifies what "initial visit" means. The amended language also informs health care providers and workers as to what services may be provided by a nonnetwork provider and when care must be transferred to a network provider.

The department reviewed the policy issues and proposed recommendations at two public meetings of the Provider Network Advisory Group, a group formed under SSB 5801, and received feedback from the advisory group and public that was incorporated into the proposed rule.

The date of adoption is March 6, 2012.
The effective date for this rule is April 6, 2012.

II. Purpose of the concise explanatory statement:

The purpose of this document is to respond to the oral and written comments directly related to the proposed rule language, received through the public comment period and a public hearing. The public comment period for this rulemaking began January 17, 2012, and ended February 23, 2012.

III. Public hearing:

A public hearing was held to receive comments from interested parties regarding this rulemaking. The hearing took place on February 23, 2012, at the L&I building in Tumwater.

One person attended and signed in with support of the proposed "initial visit" language with no changes.

IV. Summary of comments received directly related to this rulemaking, including department responses and, where applicable, changes to the rule:

The department received written comments on the rule from two organizations, the Washington State Medical Association (WSMA) and the Washington State Chiropractic Association (WSCA), and from one individual. In general, commenters were supportive of the rule and had suggestions.

WAC 296-20-015 Who may treat

Comment received: *A commenter expressed concern that there could be considerable confusion for physicians and practice staff regarding the distinction between being enrolled in the provider network vs. obtaining a provider account. The commenter understood the requirement that a provider obtain a provider account number as an operational necessity and did not recommend specific rule changes. The commenter strongly encourages the department to conduct a robust educational effort with the physician community to help make as clear a distinction as possible these parallel application pathways and the ramifications.*
Department response*: The department recognizes there are implementation challenges in educating all providers, and appreciates that clear communication and partnering with organizations is needed.*
Rule change*: There were no changes to the adopted rule language based on this comment.*

Comment received: *One commenter was concerned that current, unchanged language in WAC 296-20-015 regarding para-professionals included physician assistants.*
Department response: *The department amended WAC 296-20-015 to update and clarify "initial visit" language based on the changes made by SSB 5801. The comment addresses issues that are outside the scope of the initial visit related changes. However, in Washington State, physician assistants are classified as licensed professionals, not para-professionals so the provision is not applicable to physician assistants. Physician assistants are included in the list of provider types that will need to enroll in the statewide network.*
Rule change*: There were no changes to the adopted rule language based on this comment.*

Comment received: *Several internal reviewers noted minor editorial or clarifying changes such as: the first section is difficult to read and should be broken into 2 sections for clarity and provider is referred to in singular and plural – should be consistent.*
Department response: *The department agrees with the editorial change suggestions.*
Rule change: *(1) will be broken into 2 sections and "provider" references will be singular where applicable.*

WAC 296-20-025 Initial treatment and report of accident

Comment received: *One commenter questioned, in WAC 296-20-025(2), what immediately complete report of accident means? It seems that the time frame expected should be defined since "immediately" could be different to each person.*
Department response*: The department amended WAC 296-20-025(2) to update and clarify "initial visit" language based on the changes made by SSB 5801. The comment addresses issues that are outside the scope of the initial visit related changes. The department notes that RCW 51.48.060 provides an outside time limit, which is included in provider educational materials, stating that if the provider does not file a report to the director within five days of the date of treatment a fine of up to $250 can result.*
Rule change*: There were no changes to the adopted rule language based on this comment.*

Comment received: *One commenter noted that the current L&I definition of "bundled codes" does not include more broadly envisioned initiatives currently being explored nationally by health insurers and others that seek to "bundle" episodes of care and other services, under an aggregated payment model. The commenter recommends thoughtful use of these terms in the future to avoid any confusion between the traditional use of Bundled codes and Bundled Services (as currently defined in WAC) vs. these emerging payment strategies.*
Department response: *The department appreciates the feedback. The comment raises a potential future concern outside the scope of WAC changes to implement the "initial visit" language in SSB 5801. The department will monitor this issue and acknowledges that, in general, the rule may need updating and refinement that are outside this rulemaking.*
Rule change: *There were no changes to the adopted rule language based on this comment.*

Comment received: *One commenter indicated that (3)(g) and (3)(h) are misplaced in the proposed language, as these do not logically follow the list of items in (3)(a) through (3)(f). The recommendation is that these two subsections be re-sequenced as new (4) and (5).*
Department response: *The department agrees with this editorial suggestion.*
Rule change: *(3)(g) and (3)(h) will be placed into their own subsections and be renumbered (4) and (5) and current (4) will be renumbered (6).*

Comment received: *Several internal reviewers noted minor editorial or clarifying changes such as: "or self-insurer" was retained in most amended language, but removed in one sentence in (3) and that "work related" was not hyphenated in most amended*

language, but was hyphenated in (3)(a), and sentences in section (g) and (4) should be reordered for clarity.
Department response: *The department agrees with the editorial change suggestions.*
Rule change: *(3) will be changed to retain "or self-insurer" and "work-related" will be changed to "work related" and sentences in renumbered (4) and (6) are reordered.*

WAC 296-20-075 Hospitalization

Comment received: *One commenter indicated that, in relation to WAC 296-20-075(2), concerning hospital discharge, there are appropriate cases where chiropractic referral should be clearly stated to the patient as an option especially since they are considered a treating physician. The commenter suggested that something be provided to the injured worker explaining their options of choice of treating physician.*
Department response: *The comment addresses issues that are outside the scope of the initial visit related changes and do not require a rule change. For example, the current Report of Accident contains the following language: "Choose your own health care provider, even if someone else treated you right after your injury. You may choose from the following types of providers licensed to treat your injury and coordinate your care: medical, osteopathic, chiropractic, naturopathic, or podiatric physicians; advanced registered nurse practitioners (ARNPs); dentists and optometrists." Similar language is provided to employees of self-insured businesses in "A Guide to Industrial Insurance Benefits for Employees of Self-insured Businesses."*
Rule change*: There were no changes to the adopted rule language based on this comment.*