

WEAMA November 2018 Public Policy Update

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Legislative Overview:

The mid-term elections were on November 6, 2018 that determined the configuration of the state legislature for the 2019 legislative session. Democrats gained seats in both the House and Senate. There are still some races that have not been decided as they are too close to call, but at last count, Democrats picked up 7 seats in the House making the split 57/41 and 3 in the Senate with a 28/21 split. Policy and fiscal committees may be restructured by the House or the Senate, such as the health care committees, adding some new members and replacing others. There will be lots of opportunities to educate new legislators on Acupuncture and East Asian Medicine!

State Agency Regulatory Update

ARNPs Medical Acupuncture Advisory Opinion Discussion with NCQAC:

WEAMA met with the Washington State Nursing Care Quality Assurance Commission (NCQAC) on November 13, in Kent, WA for an Acupuncture Workgroup meeting to discuss the Advisory Opinion on Medical Acupuncture: Scope of Practice for Advanced Registered Nurse Practitioners. The Advisory Opinion significantly expands their scope of practice into a highly regulated state profession trained to practice acupuncture and requiring national certification with the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). WEAMA strongly believes that there is a need for additional public review and clarification of this significant of a scope expansion.

We had an excellent discussion with the NCQAC ARNP representative and the NCQAC Executive Director on why the number of training hours is far too low for what they are proposing learning in their Advisory Opinion. We will now wait and see what they come up with based on our input. We asked that the procedures they practice be narrower and more limited in scope. More like an introductory class on acupuncture and when it would be appropriate to refer out to a licensed acupuncturist.

Department of Health (DOH)

East Asian Medicine Advisory Committee ([EAMAC](#)): I attended the November 9, 2018 at the Department of Health in Kent, WA. We had a good discussion on the legislative proposal that WEAMA is working on. We gained clarification that if Acupuncture is designated as a system of medicine in your RCW, then the department would consider all current items in your scope part of the system of medicine. We also reviewed the latest version of the WAC/Rules impacting your profession. The department is reviewing chapter 246-803 WAC to begin the rule drafting process. The public is welcome to take part in helping us write rules. Rules are also known as regulations, Washington Administrative Code, or WAC.

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2019 EAMAC Meeting Dates and Location

The 2019 meeting dates and locations for the East Asian Medicine Advisory Committee are as follows:

February 22 - Department of Health offices in Kent. Meeting will start at 9:30 a.m.

May 10 - Spokane area. Meeting location to be determined. Meeting will start at 10:00 a.m.

September 20 - Department of Health offices in Kent. Meeting will start at 9:30 a.m.

November 15 - Department of Health offices in Kent. Meeting will start at 9:30 a.m.

Health Care Authority (HCA)

According to Jason McGill on the Governor's Health Policy Staff, they are going to run an opioid bill in the 2019 legislative session. Acupuncture could still end up in the Governor's budget, but at a recent Senate Health Care committee hearing that was not the case. I sent a letter to Dr. Charissa Fotinos at the Health Care Authority, Jason McGill and key legislators on the committee about my concerns below:

At the Senate Health Care Committee meeting last week I was quite surprised and saddened to hear that the Health Care Authority will be covering chiropractic, cognitive therapy and yoga, but not acupuncture as an alternative to opioids. The opioid rules draft that went out to all prescribing commissions and boards in the state suggests that acupuncture be an alternative to opioids. "A practitioner may combine opioids with other medications and treatments, including, but not limited to, acetaminophen, acupuncture, chiropractic, cognitive behavior therapy, nonsteroidal anti-inflammatory drugs (NSAIDS), osteopathic manipulative treatment, physical therapy, massage, or sleep hygiene."

The [Bree Collaborative Care for Chronic Pain Report and Recommendations](#) has many references to acupuncture as an alternative and evidence based studies. Even the new federal opioid bill refers to acupuncture as an alternative to opioids. The Veterans Administration also uses acupuncturists as well as the new Bureau of Labor designation for acupuncture. Our own Labor and Industries has accepted the treatment of acupuncture for low-back pain from an extensive evidence based review. Was the Low-Back Pain study included in your analysis?

I request additional clarification: How much access to yoga will there be available for your patients around the state? Acupuncture is widely available around the state and even in more rural environments. Do you consider yoga instructors licensed health care practitioners as I do not see that category in the RCWs? I would like to request the evidence based data on your choice of including yoga. The East Asian Medicine statute include various practices for exercise and therapy by a licensed health care provider well beyond needling, yet they are not included. Please confirm that Medicaid is going to pay yoga instructors to provide this service as opposed to licensed health care providers. It's not that we do not support having access to yoga, but in place of acupuncture

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and East Asian Medicine it seems counterproductive. I am sure that you are aware that only a limited portion of the population will be able to do yoga, whereas acupuncture treatments can be done on everyone of any age.

Are you aware that Seattle Children’s Hospital is offering acupuncture to fragile children who cannot take strong medications that are on Medicaid or look into the program at Harborview where acupuncturists are working in the emergency room? These services are already happening for Medicaid clients, but are often paid for through charity care as the state will only cover pharmaceuticals and not acupuncture.

If this decision is based on cost alone, I have to ask, “What is the cost of one opioid addicted patient to the Medicaid health care system?” Does that cost include emergency rooms for overdoses, the court system, neglected children that are put in foster care or the ultimate cost of a person who overdoses and does not survive it? Low income people deserve options for healthcare and it would be great if the state Medicaid insurance program honored the commercial Every Category Provider insurance law, so patients have a choice.

How did you make the determination not to cover acupuncture? You state below that “We have reviewed the literature and developed a model that is well informed.” What is that model and how is it well informed? Please answer my question below regarding which studies that you chose from the extensive list that we sent you on acupuncture evidence. I would prefer to not go through a public disclosure request to get our questions answered. I would greatly appreciate a full response to my questions on behalf of my client, the Washington East Asian Medicine Association.

Labor and Industries

Proposed Acupuncture Rulemaking Timeline

Preproposal (CR-101)	September 5, 2017
Proposal (CR-102)	January 2, 2019
Written comment period	January 2, 2019 through February 5, 2019, 5:00 pm
Public Hearing	February 5, 2019 L&I Headquarters, S118, 1:00
Adoption (CR-103)	April 30, 2019
Effective Date of the CR-103	June 1, 2019

Please note that only comments received during the public comment period as written comments or through testimony at the public hearing will be considered as formal comments to the proposed language and will be responded to as such. When the CR-102 is filed I will be able to send you more details about where written comments should be sent. The effective date of the CR-103 and the end of the pilot will occur on June 1, 2019. This will ensure no gap in services.

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[See the frequently asked questions about the Acupuncture Pilot Project](#) (318 KB PDF).

To stay informed of updates regarding the Acupuncture Pilot Project, please

<http://www.lni.wa.gov/ClaimsIns/Providers/TreatingPatients/ByCondition/Acupuncture.asp>

Office of the Insurance Commissioner

WEAMA is still gathering data on denied claims for acupuncture. At our meeting with OIC on October 10th in Olympia with OIC staff we discussed our concerns about Regence announcement that eviCore is changing guidelines for covering acupuncture, effective November 2 this year. WEAMA filed a complaint that insurers are violating “Every Category Provider” laws in WA State. Specific problems:

1. "Acupuncture is not considered medically necessary if it may delay or replace standard medical care."
2. To be considered medically necessary, treatments must meet "standards that are based on credible scientific evidence published in the peer-reviewed literature generally recognized by the relevant healthcare community, specialty society evidence-based guidelines or recommendation.
3. Specific conditions are excluded for unclear or insufficient research: ankle sprain, carpal tunnel syndrome, dysmenorrhea, fibromyalgia, hyperemesis gravidarum, nausea in pregnancy.
4. EviCore disagreed with the Acupuncture Evidence Project (and therefore exclude coverage for) hypertension, restless leg syndrome, PTSD and schizophrenia.
5. EviCore limits or excludes menstrual cramps, addiction (including tobacco), and infertility.

WEAMA Insurance Chair, John Frostad prepared a document for WEAMA to submit:

- 1) The ECP law requires insurers to pay for similar services to any category of provider that provides it. Meaning: If they pay doctors to do acupuncture, then they must pay acupuncturists to do acupuncture. There really is no work around to this for insurers, unless they can dispute as to whether the service is actually part of that provider type's legal scope.
- 2) The ECP law requires insurers to pay for available health services (across all provider types) which treat conditions that they do cover. So if they cover the treatment of migraines, they must pay for available health services of all types of providers (and vicariously their legal scope of practices) that offer treatment for migraines.
- 3) The ECP law does allow insurers to deny payment for a service type for a specific condition if the modality is found to not be clinically effective or not cost-effective. Most insurance companies have not exercised this right to exclude services for payment based upon efficacy or cost up to this point.

The Bree Collaborative Care for Chronic Pain Report and Recommendations:

<http://www.breecollaborative.org/topic-areas/chronic-pain/>

Acupuncture as an alternative to opioids is woven throughout this document. It would be great if our members could send in positive comments supporting the recommendations for acupuncture. Your feedback is requested on the Bree Collaborative's draft [Collaborative Care for Chronic Pain Report and Recommendations](#). Our workgroup will review comments before submitting a final draft for review and adoption by the Bree Collaborative. Please read the draft Report before completing the survey [here](#). We estimate that this survey will take 10-15 minutes to complete.

Feedback must be received by 5pm Friday, December 21st.

Potential 2019 Legislation Impacting Acupuncture and East Asian Medicine

RCW 18.06 Update

WEAMA will be proposing a major update to RCW 18.06 for the first time in 8 years. We had an additional board meeting on November 18th to discuss key elements in the legislative proposal and provide additional opportunity for stakeholder work and public comment. It is common to working on legislative drafts with the Code Reviser and Health Care Committee staff two months before session begins. We want to make sure it is accurate and includes all the necessary issues that we need to address and update. It also needs to be reviewed by our health law attorney, John Conniff and the DOH Assistant Attorney General and staff prior to releasing publicly. It is part of the due diligence of running a bill.

Nearly 2,500 bills will be introduced this session and its important that we get it right. The Chairs of both the House and Senate Health Care Committees have offered to sponsor our bill next session which is a very big deal that we have that kind of support! We also asked John Conniff, our health law attorney to attend the November 18th meeting for 1 hour to answer questions that anyone might have regarding the name change or other issues that we are considering updating in your statute, RCW 18.06.

Here are the key elements of the bill that I discussed at the November 18th meeting.

- **Use term Acupuncture/Acupuncturists as designation for profession vs East Asian Medicine/ Practitioner. (*Only under consideration until membership official vote*)**
 - East Asian Medicine used to describe a region or countries, not people.
 - Term would be protected in law for practitioners and schools who would like to continue to use the term East Asian.
- **Continuing Education: DOH gains authority in Rule to specify hours**
 - Suggest matching NCCAOM, but not required to use them.
 - (CE) 60 hours over 4 years (15 hours a year)

- **Add “local anesthetics” and “epinephrine” to Point Injection Therapy**
- **Clarify that Trigger Point Needling (Dry Needling) is Acupuncture**
 - For movement impairment only
 - Do not use acupuncture codes
 - No distal points (local trigger points only)
 - No electrical stimulation of needles
 - No needle retention
 - Refer to therapy as trigger point needling (not dry needling)
 - Refer out to a Licensed Acupuncturist/EAMP after 4 visits
- **High level of training required for trigger point needling training:**
 - Basic acupuncture medical theory and pathology 150 hrs.
 - Trigger Point Needling and point location (DPT) 300 hrs.
 - Needling and insertion safety training 150 hrs.
 - Clean Needle Technique 50 hrs.
 - Supervised clinical training 350 hrs.
 - Total (May negotiate to 800 minimum) 1000 hrs.
- **Misc. Clean up**

Point of Clarification in your RCW on using the licensure title for your profession:

18.06.020 (5) Any person licensed as an acupuncturist under this chapter prior to June 10, 2010, must, upon successful license renewal, be granted the title East Asian medicine practitioner or the letters EAMP indicating such license title. However, nothing in this section shall prohibit or limit in any way a practitioner licensed under this title from holding himself or herself out as an acupuncturist or licensed acupuncturist, or from using the letters L.Ac. after his or her name.

Will changing the name of the profession change or limit your scope of practice in any way?

No, your scope of practice is determined by what is listed in your RCW 18.06. It does not change because you are called East Asian Medicine Practitioners or an Acupuncturist. All scope changes have to be done in statute by running a bill. Major scope of practice changes typically go through a Sunrise Review process and then get a recommendation to the legislature from DOH to proceed with a bill or not.... If you are unfamiliar with the Sunrise Review process, please go to:

<https://www.doh.wa.gov/AboutUs/ProgramsandServices/HealthSystemsQualityAssurance/SunriseReviews>

For those of you who were unable to attend the WEAMA Business Meeting on Sunday, November 18, 2018, please review the agenda, survey results and legislative timeline below.

[View Attached Agenda](#)

[Survey Results](#)

[Legislation Timeline](#)

2019 Legislative Session Proposals (that we are aware of)

DOH Licensing System Replacement: DOH regulates 430,000 healthcare practitioners in 86 professions. They have an antiquated computer system in place for licensure of professions. The department is proposing a \$10 fee increase for 4 years for all professions to pay for the licensing system upgrade.

Background: Currently professions pay a licensure fee that covers the cost of the regulation of the profession at DOH. Fees go up and down depending on the number of investigations or disciplinary actions during a set period of time. There are approximately 1,400 licensed EAMPs in our state. Acupuncture has a very low level of complaint against our practitioners and disciplinary actions. The East Asian Medicine Advisory committee is also funded by your licensure fees. The East Asian Medicine Advisory Committee (EAMAC) is a Secretary Profession regulated under the Secretary of Health. Your licensure also covers the [HEAL-WA](#) research access for practitioners.

Physical Therapy Dry Needling Bill: WEAMA was contacted in the fall of 2017 by the Center for Dialogue and Resolution in Tacoma WA, at the request of the Physical Therapy Association of WA (PTWA), to see if we were interested in participating in discussions with PTWA regarding their dry needling legislative proposal for the 2019 legislative session. We agreed to disagree, and will both be running legislation this session that includes Trigger Point Needling, which we consider acupuncture. They are still working on a copy of their bill draft.

3rd Party Benefit Managers: This bill is intended to provide greater regulation and transparency for benefit managers such as Evicore by putting them under the Office of the Insurance Commissioner. More to come as they get closer to dropping a bill!

2019 Acupuncture & East Asian Medicine Day

**Please join WEAMA for our first Acupuncture & East Asian Medicine Day in Olympia
February 26, 2019!**

We are going to be offering auricular acupuncture treatments in the Capital Building as a demonstration! WEAMA has reserved the Washington Room in Prichard Building on the Capital Campus for our legislative day. We will work with you to set up meetings with your local legislators to advocate for acupuncture. Please mark your calendars for Orientation and review of talking point starting at 7 am! More info to come as we get closer to the date!

Please let us know if you would like to be one of the practitioners demonstrating auricular acupuncture on interested parties and state legislators!