

**WSR 21-19-140
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2021-18—Filed September 21, 2021, 3:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-096.

Title of Rule and Other Identifying Information: Washington state health insurance pool (WSHIP) purpose, membership, and annual reporting.

Hearing Location(s): On October 26, 2021, at 3:00 p.m. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner website here <https://www.insurance.wa.gov/washington-state-health-insurance-pool-wship-r-2021-18>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: November 1, 2021.

Submit Written Comments to: Shari Maier, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 26, 2021.

Assistance for Persons with Disabilities: Contact Melanie Wattness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by October 26, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify the purpose, membership, and annual reporting requirements for WSHIP.

Reasons Supporting Proposal: A lack of required WSHIP reporting for some carriers may be due in part to the fact that the existing rules do not describe the purpose, membership, or annual reporting requirements of the WSHIP. Adding this information to the rules will help provide guidance regarding which carriers fall under the reporting requirements.

Statutory Authority for Adoption: RCW 48.41.170, 48.02.060.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7173; Implementation: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7214; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7050.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501, phone 360-725-7038, email SimonC@oic.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The average number of employees per firm was determined below using Bureau of Labor Statistics data:

Average number of firms: 58.

Average annual employment over 12 months: 6,777.

Average number of employees per firm: 117.

The average number of employees for a Direct Health and Medical Insurance Carrier is 117 employees, above the small business threshold of 50 under chapter 19.85.020(3).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Additionally, under RCW 19.85.030 (1)(a), the proposed rule will impose less-than-minor costs on businesses in an industry, therefore a small business economic impact statement is not required.

NAICS Code	Estimated Cost of Compliance	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of AVG Annual Gross Business Income
524114	\$100	Direct Health and Medical Insurance Carriers	\$228,929.41	\$88,030.57 (2018 Dataset pulled from USBLS)	\$99,243.89 (2018 Dataset pulled from DOR)

September 21, 2021
Mike Kreidler
Insurance Commissioner

OTS-3318.2

AMENDATORY SECTION (Amending WSR 03-07-007, filed 3/6/03, effective 4/6/03)

WAC 284-91-001 Plan of operation approved. Under RCW 48.41.040(4), the commissioner approves the plan of operation submitted by the board of directors of the ((Washington state health insurance)) pool ((WSHIP)). The plan of operation is composed of the following documents:

- (1) Articles of organization approved by the WSHIP board on September 5, 2002, and amended by the insurance commissioner on March ((4)) 5, 2003;
- (2) Bylaws approved by the WSHIP board on September 5, 2002, and approved by the insurance commissioner on March 5, 2003. The WSHIP board subsequently amended and restated its bylaws on January 8, 2020, which were approved by the insurance commissioner on January 27, 2020; and
- (3) Operating rules approved by the WSHIP board on September 5, 2002.

[Statutory Authority: RCW 48.02.060, 48.41.040, 48.41.170, 48.44.050, and 48.46.020. WSR 03-07-007 (Matter No. R 2001-15), § 284-91-001, filed 3/6/03, effective 4/6/03.]

NEW SECTION

WAC 284-91-100 Intent. The Washington state health insurance pool (WSHIP) was created with the intent of ensuring the availability of comprehensive health insurance to residents who are denied health

insurance and are otherwise unable to obtain such insurance coverage directly under any individual or group health plan.

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NEW SECTION

WAC 284-91-110 Definitions. The definitions in this section apply throughout this chapter.

(1) "Accounting year" means a 12-month period determined by the board for purposes of recordkeeping and accounting. The first accounting year may be more or less than 12 months and, from time to time in subsequent years, the board may order an accounting year of other than 12 months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

(3) "Board" means the board of directors of the pool.

(4) "Commissioner" means the insurance commissioner.

(5) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

(6) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(7) "Health carrier" or "carrier" has the same meaning as in WAC 284-43-0160.

(8) (a) "Health coverage" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of medicare.

(b) "Health coverage" does not include:

(i) Short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, limited benefit or credit insurance;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Insurance arising out of the worker's compensation or similar law;

(iv) Automobile medical payment insurance; or

(v) Insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(9) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement.

(a) This includes any: "Health coverage," as defined under this section; uninsured arrangements of group or group-type contracts, including employer self-insured, cost-plus, or other benefit methodologies not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits.

(b) "Health plan" excludes the types of insurance excluded under the definition of "health coverage" in this section.

(10) (a) "Member" means:

(i) Any commercial health carrier which provides disability insurance or stop loss insurance, any health care service contractor, any health maintenance organization licensed under Title 48 RCW, and any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010;

(ii) The Washington state health care authority as issuer of the state uniform medical plan; or

(iii) When authorized by federal law, employers and other entities, including self-insured employers, other self-funding entities, and employee welfare benefit plans that provide health plan benefits in this state.

(b) "Member" does not include any carrier, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health coverage" in this section.

(11) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

(12) "Pool" means the Washington state health insurance pool.

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NEW SECTION

WAC 284-91-120 Health insurance pool—Membership. All entities in this state, on or after May 18, 1987, meeting the definition of a member (as per WAC 284-91-110), shall be members of the pool.

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NEW SECTION

WAC 284-91-130 Financial participation in pool—Computation, deficit assessments. (1) Following the close of each accounting year, the pool administrator shall determine the total net cost of pool operation which shall include:

(a) Net premium (premiums less administrative expense allowances), the pool expenses of administration, and incurred losses for the year, taking into account investment income and other appropriate gains and losses; and

(b) The amount of pool contributions specified in the state Omnibus Appropriations Act for deposit into the health benefit exchange account under RCW 43.71.060, to assist with the transition of enrollees from the pool into the health benefit exchange created by chapter 43.71 RCW.

(2) Each member's proportion of participation in the pool shall be determined annually, by the board based on annual statements and other reports deemed necessary by the board and filed by carriers with the commissioner, by multiplying the total cost of pool operation by a fraction. The numerator of the fraction equals that member's total number of resident insured persons, including spouse and dependents,

covered under all health plans in the state by that member during the preceding calendar year. The denominator of the fraction equals the total number of resident insured persons, including spouses and dependents, covered under all health plans in the state by all pool members during the preceding calendar year.

(a) All carriers that meet the definition of a member, regardless of whether they actually provided applicable health coverage during the accounting year, must file these statements and other reports.

(b) For purposes of calculating the numerator and the denominator under this subsection:

(i) All health plans in the state by the state health care authority include only the uniform medical plan;

(ii) Each ten resident insured persons, including spouse and dependents, under a stop loss plan or the uniform medical plan shall count as one resident insured person; and

(iii) Health plans serving medical care services program clients under RCW 74.09.035 are exempted from the calculation.

(c) Except as provided in RCW 48.41.037, any deficit incurred by the pool, including pool contributions for deposit into the health benefit exchange account, shall be recouped by assessments among members apportioned under this subsection pursuant to the formula set forth by the board among members. The monthly per member assessment may not exceed the 2013 assessment level of \$2.57. If the maximum assessment is insufficient to cover a pool deficit, the assessment shall be used first to pay all incurred losses and pool administrative expenses, with the remainder being available for deposit in the health benefit exchange account.

(3) (a) The board may abate or defer, in whole or in part, the assessment of a member if they determine that payment of the assessment would endanger the ability of the member to fulfill its contractual obligations.

(b) If an assessment against a member is abated or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (2) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency.

(4) (a) Subject to the limitation imposed in subsection (2)(c) of this section, the pool administrator shall transfer the assessments for pool contributions for the operation of the health benefit exchange to the treasurer for deposit into the health benefit exchange account.

(b) If assessments exceed actual losses and administrative expenses of the pool and pool contributions for deposit into the health benefit exchange account, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

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NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number
284-91-001

New WAC Number
284-91-140