

WSR 22-09-056
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-17—Filed April 18, 2022, 11:15 a.m.]

Supplemental Notice to WSR 21-20-107.

Preproposal statement of inquiry was filed as WSR 21-14-097.

Title of Rule and Other Identifying Information: Health care sharing ministries rule making.

Hearing Location(s): On May 26, 2022, at 2:00 p.m., Zoom meeting. Detailed information for attending the Zoom meeting is posted on the office of insurance commissioner (OIC) website <https://www.insurance.wa.gov/health-care-sharing-ministries-r-2021-17>. Due to the COVID-19 public health emergency, this meeting will be held via the Zoom platform.

Date of Intended Adoption: May 31, 2022.

Submit Written Comments to: Jane Beyer, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by May 24, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by May 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner is adopting rules relating to the exemption of health care sharing ministries (HCSM) from the definition of health carrier or insurer under RCW 48.43.009 to reduce confusion related to entities' status as HCSMs and increase transparency.

Reasons Supporting Proposal: The rule making is adopting new WAC to reduce confusion related to entities' status as HCSMs, increase transparency, and codify all applicable rules related to HCSM in one location.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, and 48.15.015.

Statute Being Implemented: RCW 48.43.009.

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: Jane Beyer, P.O. Box 40260, Olympia, WA 98504, 360-725-7043; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504, 360-725-7000.

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, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@oic.wa.gov.

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. HCSMs are defined, in part, as organizations that have existed since December 31, 1999, are described in Section 501 (c) (3) of the Internal Revenue Code, and are exempt from taxation under Section 501(a) of the Internal Revenue Code. These entities gen-

erally need to file form 990 with the Internal Revenue Service (IRS). The form is used by the IRS to gather information about tax-exempt organizations. OIC used IRS 990 form information to determine number of employees, as well as annual payroll and annual gross business income of these entities.

The number of employees reported in the most recent 990 forms available for each entity that to the best of OIC's knowledge claims to be a health care sharing ministry, including some entities that OIC disputes are legitimate HCSMs, is detailed in the table below.

Table 1

HCSM	Number of Employees	990 Form Year
<i>Samaritan Ministries</i>	423	2020
<i>Christian Healthcare Ministries</i>	292	2020
<i>Christian Care Ministries</i>	713	2020
<i>Liberty Healthshare¹</i>	568	2019
<i>OneShare Health²</i>	236	2019
<i>Zion Health³</i>	25	2020

- ¹ OIC is currently investigating Liberty Healthshare to determine whether they meet the requirements of RCW 48.43.009 or 26 U.S.C. § 5000A (d)(2)(B).
- ² In 2021, OneShare Health, LLC, entered into a voluntary consent order with OIC in which OIC asserted it has reason to believe OneShare Health, LLC, does not satisfy the requirements to be a valid HCSM, and in which OneShare Health, LLC, agreed to cease soliciting Washington residents and to not renew existing agreements, contracts, or memberships with Washington state residents.
- ³ OIC is currently investigating Zion Health to determine whether they meet the requirements of RCW 48.43.009 or 26 U.S.C. § 5000A (d)(2)(B).

Given the above data for each identifiable health care sharing ministry, the average number of employees per business is 376. This is well above the threshold of a small business, which is defined as 50 or fewer employees. However, because purported HCSMs are not required to report their existence or operation to OIC under current law, it is possible that there may be other small businesses in this industry that OIC is not aware of. This rule is intended to address this issue, in part, by giving OIC authority to request information from these entities.

Determining which HCSMs operate in Washington was difficult, and not all the identified ministries had readily available 990 forms. Therefore, OIC was able to determine the annual payroll and annual gross business income for six entities that hold themselves out as HCSMs. Even if there are entities in this industry that would be considered small employers, this analysis indicates that this rule would not result in more-than-minor costs for these employers.

The annual payroll and the annual gross business income for each of the six companies is detailed in Table 2 below. Per the definitions mentioned in RCW 19.85.020, a "minor cost" means a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll. Given this definition, three-tenths of one percent of annual gross business income and one percent of annual payroll have been calculated in Table 2.

Table 2

<i>HCSM</i>	<i>Annual Payroll</i>	<i>Total Revenue</i>	<i>1% of Annual Payroll</i>	<i>0.3% of Annual Revenue</i>	<i>990 Form Year</i>
Samaritan Ministries	\$27,561,127.00	\$45,878,483.00	\$275,611.27	\$137,635.45	2020
Christian Healthcare Ministries	\$16,549,206.00	\$633,361,869.00	\$165,492.06	\$1,900,085.61	2020
Christian Care Ministries	\$54,000,000.00	\$784,000,000.00	\$540,000.00	\$2,352,000.00	2020
Liberty Healthshare	\$18,168,498.00	\$54,725,576.00	\$181,684.98	\$164,176.73	2019
OneShare Health	\$11,256,146.00	\$59,871,001.00	\$112,561.46	\$179,613.00	2019
Zion Health	\$646,527.00	\$9,267,936.00	\$6,465.27	\$27,803.81	2020

Measuring the cost of responding to an inquiry from the insurance commissioner is difficult given the variation in responses. For some entities, the information typically requested by OIC, such as proof of the date of formation, statements of common beliefs, membership terms, and annual audits, may be readily available. For others, this information may not be readily available or well organized. For this reason, OIC used a minimum minor cost and a maximum minor cost to set a cost threshold for this analysis. The employee hourly rate for each HCSM was calculated using the number of employees and the payroll information provided in the 990 forms. The cost parameters for the minimum minor cost calculations can be seen below:

Table 3

<i>Parameter for Inquiry Response</i>	<i>Value</i>
<i>Number of employees involved</i>	1
<i>Hours per Employee</i>	8

Similarly, a maximum minor cost was calculated, which included additional employees and hours, as well as legal counsel. For the legal cost estimate, OIC used an hourly rate of \$350. This estimate is within the range of hourly rates for attorneys in Washington state, which is estimated to be between \$175 and \$378.⁴ The cost calculations for the maximum minor cost can be seen below:

⁴ "How Much Does a Lawyer Charge in Washington? (2021)." Clio, June 3, 2021. <https://www.clio.com/resources/legal-trends/compare-lawyer-rates/wa/#:~:text=The%20typical%20lawyer%20in%20Washington,hire%20an%20attorney%20in%20Washington.>

Table 4

<i>Parameter for Inquiry Response</i>	<i>Value</i>
<i>Number of employees involved</i>	3
<i>Hours per Employee</i>	8
<i>Attorney Hours</i>	16
<i>Attorney Hourly Rate</i>	\$350.00

Given these parameters, the minor cost assumes one inquiry per HCSM per year. This estimate is greater than OIC's current practice. In 2021, OIC issued eight inquiries to different HCSMs operating in Washington state. Given that more than eight ministries operate in the state, the assumption that each HCSM will receive an inquiry and therefore bear the cost is an overestimate. OIC was unable to determine exactly how many ministries operate in Washington state. However, by examining customer inquiries and the known HCSMs associated with the Alliance of Health Care Sharing Ministries, we estimate that at

least 14 ministries sell health sharing arrangements in Washington state. According to the Alliance of Health Care Sharing Ministries' website, there are 108 health care sharing ministries that meet the federal definition, indicating that there are likely more than 14 operating in Washington state. With this information, we assume each HCSM will receive 0.57 inquiries per year (8 inquiries/14 known HCSM).

Both the maximum and minimum minor cost for each HCSM are shown, along with the one percent of annual payroll and 0.3 percent of annual revenue. The lesser of either one percent of annual payroll or 0.3 percent of annual revenue is bolded.

Table 5

<i>HCSM</i>	<i>1% of Annual Payroll</i>	<i>0.3% of Annual Revenue</i>	<i>Min Cost</i>	<i>Max Cost</i>
<i>Samaritan Ministries</i>	\$275,611.27	\$137,635.45	\$74.46	\$6,046.79
<i>Christian Healthcare Ministries</i>	\$165,492.06	\$1,900,085.61	\$64.77	\$5,988.63
<i>Christian Care Ministries</i>	\$540,000.00	\$2,352,000.00	\$86.56	\$6,119.33
<i>Liberty Healthshare</i>	\$181,684.98	\$164,176.73	\$36.56	\$5,819.34
<i>OneShare Health</i>	\$112,561.46	\$179,613.00	\$54.51	\$5,927.06
<i>Zion Health</i>	\$6,465.27	\$27,803.81	\$29.56	\$5,777.33

For all the entities whose data OIC had access to, the maximum minor cost estimate for each identified HCSM is well below the lesser of either one percent of annual payroll or 0.3 percent of annual revenue.

Based upon the foregoing information, OIC determines that this rule is exempt from small business economic impact statement requirements, as the businesses that must comply with the proposed rule are not small businesses. OIC has found that HCSMs may not be considered small businesses under RCW 19.85.020(2).

Additionally, it is concluded that the proposed rule does not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2) based on OIC's analysis of 990 forms filed by known entities holding themselves out as HCSMs.

A copy of the detailed cost calculations may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, email Simon.Casson@oic.wa.gov.

April 18, 2022
 Mike Kreidler
 Insurance Commissioner

OTS-3371.3

SUBCHAPTER N

HEALTH CARE SHARING MINISTRIES

NEW SECTION

WAC 284-43-8210 Definitions. For the purposes of this subchapter:

- (1) "Annual audit" means an audit occurring once a year at approximately the same time each year for the preceding calendar year.
- (2) "Certified public accounting firm" means a firm licensed by state boards of accountancy, the District of Columbia, and U.S. territories.
- (3) "Continuously" means without a break or interruption.
- (4) "Generally accepted accounting principles" means the compulsory accrual method of accounting for a public company.
- (5) "Health care sharing ministry" means an organization:
 - (a) That is described in Section 501 (c) (3) of the Internal Revenue Code and is exempt from taxation under Section 501(a) of the Internal Revenue Code;
 - (b) That has members who share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the state in which a member resides or is employed;
 - (c) Whose members retain membership in the health care sharing ministry even after the member develops a medical condition;
 - (d) Which, or a predecessor of which, has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and
 - (e) That conducts an annual audit, which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.
- (6) "Independent certified public accounting firm" means a certified public accounting firm that meets the standards of independence set forth by the American Institute of Certified Public Accountants (AICPA), the Public Company Accounting Oversight Board (PCAOB), or another similar body that oversees or sets standards for the accounting or auditing professions.
- (7) "Organization" means an entity organized as a corporation, a limited liability company (LLC), an unincorporated association, or a trust. Entities must be organized under United States federal or state law.
- (8) "Predecessor" means an organization that was acquired, merged with, or otherwise replaced by a successor organization, and the predecessor organization no longer shares medical expenses.
- (9) "Share medical expenses" means providing for the medical needs and financial needs related to medical expenses of a participant through member contributions.

[]

NEW SECTION

WAC 284-43-8220 Prompt reply to the commissioner required. Any entity claiming to be a health care sharing ministry shall timely reply in writing to an inquiry of the commissioner regarding their compliance with RCW 48.43.009, and any potential violations of RCW 48.05.030(1) and 48.15.020(1) and related regulations, including this regulation. A timely response is one that is received by the commissioner within 15 business days from receipt of the inquiry.

[]

NEW SECTION

WAC 284-43-8230 Continuously sharing medical expenses. A health care sharing ministry must share medical expenses among its members, and this sharing must be continuous and without interruption. In order for sharing between a predecessor organization and its successor organization to be continuous and without interruption, remaining predecessor organization members must share medical expenses with successor organization members, if any, at the time the successor organization acquires, merges with, or otherwise replaces the predecessor's medical expense sharing activities.

[]