

WSR 21-20-109

PROPOSED RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-13—Filed October 4, 2021, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-096.

Title of Rule and Other Identifying Information: Student health plans.

Hearing Location(s): On Tuesday, November 9, 2021, at 3:30 [p.m.], Zoom. Detailed information for attending the Zoom meeting will be posted on the office of insurance commissioner (OIC) website here <https://www.insurance.wa.gov/student-health-plans-r-2021-13>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: November 15, 2021.

Submit Written Comments to: Shari Maier, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-725-7171, by November 9, 2021.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by November 8, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner is adopting rules to amend existing rules as necessary to implement chapter 53, Laws of 2021 (HB 1009), ensure existing regulations comply with the requirement of this legislation regarding student health plan coverage, and adopt technical corrections.

Reasons Supporting Proposal: HB 1009 recently passed and was signed into law (chapter 53, Laws of 2021) requiring that student health plans which provide maternity coverage must also provide substantially similar coverage for termination of pregnancy. OIC needs to update existing rules to align with the legislation's requirements.

Statutory Authority for Adoption: RCW 48.02.060; and chapter 53, Laws of 2021 (HB 1009).

Statute Being Implemented: RCW 48.43.073.

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 40260, Olympia, WA 98504-0260, 360-725-7173; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from requirements for a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii), as this rule will adopt or incorporate, one or more of the following without 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, items as referenced by Washington state law, national consensus codes that generally establish industry standards. The material adopted or incorporated regulates the same

subject matter and conduct as the adopting or incorporating rule and is exempt from RCW 34.05.328 (1) (c).

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(3) - provides exclusions under RCW 34.05.310 (4) (e), the provisions of this rule were dictated by statute.

RCW 19.85.025(4) - the businesses that must comply with the proposed rule are not small businesses under chapter 19.85 RCW. OIC has found that none of the existing health insurance issuers may be considered small businesses under RCW 19.85.020(2).

Explanation of exemptions: The commissioner is adopting this rule to amend existing rules as necessary to implement chapter 53, Laws of 2021 (HB 1009), ensure existing regulations comply with the requirement of this legislation regarding student health plan coverage, and adopt technical corrections.

HB 1009 recently passed and was signed into law (chapter 53, Laws of 2021) requiring that student health plans which provide maternity coverage must also provide substantially similar coverage for termination of pregnancy. OIC needs to update existing rules to align with the legislation's requirements.

Legal obligations: Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry¹ ..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... To determine whether the proposed rule will have a disproportionate cost impact on small businesses²."

¹ RCW 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

² RCW 19.85.040: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under RCW 19.85.025(3) - provides exclusions under RCW 34.05.310 (4) (e), the provisions of this rule were dictated by statute; RCW 19.85.025(4) - the businesses that must comply with the proposed rule are not small businesses, under chapter 19.85 RCW. OIC has found that none of the existing health insurance issuers may be considered small businesses under RCW 19.85.020(2).

Rationale: To comply with HB 1099 that passed in 2020 legislative session and was signed into law, this rule updates existing regulations so that health insurance carriers offering maternity coverage to also provide similar coverage for termination of pregnancy.

Determination: OIC determines that this rule is exempt from SBEIS requirements.

October 4, 2021
Mike Kreidler
Insurance Commissioner

OTS-3310.1

AMENDATORY SECTION (Amending WSR 19-24-039, filed 11/26/19, effective 12/27/19)

WAC 284-43-7210 Definitions. (1) "Contraceptive services" means consultations, examinations, procedures, and other health care services to obtain contraceptive supplies or voluntary sterilization. This includes prescribing, dispensing, inserting, delivering, distributing, administering, or removing contraceptive supplies and voluntary sterilization procedures.

(2) "Contraceptive supplies" means all contraceptive drugs, devices, and other products approved by the Federal Food and Drug Administration. This includes over-the-counter contraceptive drugs, devices, and products approved by the Federal Food and Drug Administration.

(3) "Cost-sharing" means any expenditure required of a covered person for covered services or supplies, including applicable taxes. Cost-sharing includes deductibles, coinsurance, copayments, or similar charges. Cost-sharing does not include premiums, balance billing amounts for nonnetwork providers, or spending for noncovered services or supplies.

(4) "Covered person" or "enrollee" has the same meaning as defined in RCW 48.43.005.

(5) "Gender expression" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

(6) "Gender identity" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

(7) "Medical management" or "medical management techniques" has the same meaning as defined in RCW 48.165.010.

(8) "Reproductive health care services" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

(9) "Reproductive system" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

(10) "Well-person preventative visits" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

[Statutory Authority: RCW 48.02.060, 48.43.072, 48.43.073 and 2019 c 399. WSR 19-24-039, § 284-43-7210, filed 11/26/19, effective 12/27/19.]

AMENDATORY SECTION (Amending WSR 19-24-039, filed 11/26/19, effective 12/27/19)

WAC 284-43-7220 Coverage required. A health plan must provide coverage for all services and supplies required under RCW 48.43.072 and 48.43.073. (~~Effective January 1, 2021,~~) A student health plan must also provide coverage for all services and supplies required under RCW 48.43.072 and 48.43.073.

(1) Required coverage of contraceptive services and supplies includes, but is not limited to:

(a) All prescription and over-the-counter contraceptive drugs, devices, and other products approved by the Federal Food and Drug Administration;

(b) Voluntary sterilization procedures; and

(c) The consultations, examinations, procedures, and medical services that are necessary to prescribe, dispense, insert, deliver,

distribute, administer, or remove the drugs, devices, and other products or services in (a) and (b) of this subsection.

(2) A health plan or student health plan that provides coverage for maternity care or services must also provide a covered person with substantially equivalent coverage to permit the abortion of a pregnancy. For the coverage to be substantially equivalent, a health plan or student health plan must not apply cost-sharing or coverage limitations differently for abortion and related services than for maternity care and its related services unless the difference provides the enrollee with access to care and treatment commensurate with the enrollee's specific medical needs, without imposing a surcharge or other additional cost to the enrollee beyond normal cost-sharing requirements under the plan.

(3) This subchapter does not diminish or affect any rights or responsibilities provided under RCW 48.43.065.

[Statutory Authority: RCW 48.02.060, 48.43.072, 48.43.073, and 2019 c 399. WSR 19-24-039, § 284-43-7220, filed 11/26/19, effective 12/27/19.]

AMENDATORY SECTION (Amending WSR 19-24-039, filed 11/26/19, effective 12/27/19)

WAC 284-43-7250 Filing requirements. (1) For health plans and student health plans subject to RCW 48.43.072 and 48.43.073, the carrier must ensure that the health plan and student health plan forms clearly inform covered persons of their rights to access contraceptive services and supplies, voluntary sterilization and abortion. The health plan and student health plan forms must clearly inform covered persons how they access these services and supplies.

~~(2) ((For student health plans subject to RCW 48.43.072, the carrier must ensure that the plan forms clearly inform covered persons of their rights to access contraceptive services and supplies, and voluntary sterilization. The plan forms must clearly inform covered persons how they access these services and supplies.~~

~~(3))~~) A health plan's forms and student health plan's forms must include a detailed description of the plan's benefits provided to covered persons that specifically instructs covered persons where and how they access coverage of contraceptive supplies, including over-the-counter supplies. This information must include:

(a) Whether covered supplies are available from in-network and out-of-network providers; and

(b) How to submit a claim including, at a minimum:

(i) Whether covered persons may purchase covered supplies and seek reimbursement from the carrier;

(ii) How to access and submit any necessary claim forms; and

(iii) Where to send a claim, such as a mailing address or instructions for submitting a claim electronically.

~~((4))~~) (3) If a health plan or student health plan limits the number of covered over-the-counter contraceptive supplies, the health plan or student health plan must include with its filing supporting evidence showing that the limitation does not impose any restriction or delay on the coverage of contraceptive supplies in violation of RCW 48.43.072 or any other state or federal law.

~~((5))~~ (4) If a health plan or student health plan limits the number of covered contraceptive services or supplies, the plan forms must include a detailed description of the plan's benefits that specifically instructs covered persons how to request coverage of additional contraceptive services or supplies. The process may not impose any restrictions or delays on the coverage or access of contraceptive services or supplies in violation of RCW 48.43.072, or any other state or federal law.

[Statutory Authority: RCW 48.02.060, 48.43.072, 48.43.073, and 2019 c 399. WSR 19-24-039, § 284-43-7250, filed 11/26/19, effective 12/27/19.]