

WSR 23-20-121
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R2023-06—Filed October 4, 2023, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-138.

Title of Rule and Other Identifying Information: Health care benefit manager (HCBM) registration.

Hearing Location(s): On November 7, 2023, at 3:00 p.m., via Zoom. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/health-care-benefit-manager-registration-r-2023-06>.

Date of Intended Adoption: November 13, 2023.

Submit Written Comments to: Sydney Rogalla, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 9, 2023.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-725-7013, TTY 360-586-0241, email katie.bennett@oic.wa.gov, by November 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, the administrative burden for HCBM registration is burdensome and requires a significant amount of documentation. The purpose of this proposed rule is to decrease the burden and streamline it to work more efficiently for registration and renewal. It will also require that HCBMs disclose any federal violations, as the current rule is worded so that they only disclose state level violations. This will help create consistency and transparency for HCBMs when they register and renew in Washington state.

Reasons Supporting Proposal: This will create a more efficient process of registration and renewal for HCBM registration, as well as improve transparency with the disclosure of any federal or state violations.

Statutory Authority for Adoption: RCW 48.02.060, 48.200.280(6), 34.05.485 (1)(c), 48.02.100.

Statute Being Implemented: RCW 48.200.280(6).

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: Sydney Rogalla, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501, 360-725-7042; Implementation: John Haworth, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000; and Enforcement: Charles Malone, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 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.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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. 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 businesses."

This rule proposal is exempt from requirements of the Regulatory Fairness Act. Based on findings in the cost-benefit analysis, the costs of compliance estimated by OIC are minor costs on businesses as defined by RCW 19.85.020(2).

The proposed rule will streamline the registration process for HCBMs, reducing excess documentation requirements. Notably, HCBMs will not be required to submit the NAIC Form 11 biographical affidavit and the NAIC Approved Third Party Vendor Background Report. The Approved Third Party Vendor Background Report is currently only required when requested. Under current regulation, submitting the required documents incurs a cost for the HCBMs in terms of employee time. It can take a significant amount of time for an individual to gather and compile all the required elements in the two forms. The streamlining of this process is a benefit for registering entities.

Additionally, HCBMs will be required to report federal violations in addition to Washington and other state violations as a part of the registration process. Assuming reputable HCBMs are not committing violations, this should not be a significant cost for the entities when registering.

Overall, this rule streamlines the HCBM registration process, providing a net benefit to registering entities. OIC has applied a default cost of compliance (\$100) for both health insurance carriers and PBMs/HCBMs/TPAs. Health insurance carriers are included as they are responsible for the activities of HCBMs conducted on their behalf (per WAC 284-180-110(2)). Although it is unlikely that this rule would result in even the full default cost of compliance, cost of compliance does not exceed the minor cost estimate thresholds for either of the entities examined.

2019 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	Average Number of Employees/Business	Minor Cost Estimate*
524114	\$100.00	Direct health and medical insurance carriers	113	\$251,392.70
524292	\$100.00	Pharmacy benefit management and other third party administration of insurance and pension funds	36	\$28,510.46

* Minor cost estimate: The greater of one percent of annual payroll or 0.3 percent of revenue.

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

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.

October 4, 2023
 Mike Kreidler
 Insurance Commissioner

OTS-4928.2

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-210 Registration and renewal fees. (1) ~~The ((registration, renewal and oversight activities for health care benefit managers must be))~~ commissioner must establish fees for registration and renewal in an amount that ensures the program for the registration, renewal, and oversight activities of the health care benefit managers is self-supporting. Each health care benefit manager must contribute a sufficient amount to the commissioner's regulatory account to pay for the reasonable costs, including overhead, of regulating health care benefit managers.

(2) The initial registration fee is ~~((two hundred dollars))~~ \$200.

(3) For the renewal fee, the commissioner will charge a proportional share of the annual cost of the insurance commissioner's renewal and oversight activities ~~((to all))~~ of health care benefit managers. ~~((The))~~ Each health care benefit managers' proportional share ~~((shall))~~ of the program annual operating costs will be based on their Washington state annual gross ~~((health care benefit manager business))~~ income of their health care benefit manager business for the previous calendar year. The ~~((minimum))~~ renewal fee is ((five hundred dollars)) \$500, at a minimum, and may increase based on a proportional share of each health care benefit managers gross income as reported to the insurance commissioner.

(4) If an unexpended balance of health care benefit manager registration and renewal funds remain in the insurance commissioner's regulatory account at the close of a fiscal year, the commissioner will carry the unexpended funds forward and use them to reduce future renewal fees.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, § 284-180-210, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-210, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-220 Health care benefit manager registration. (1) ~~((Beginning January 1, 2017, through December 31, 2021, to conduct business in this state, pharmacy benefit managers must register with the commissioner and must annually renew the registration.~~

~~((2-))~~ Beginning January 1, 2022, and thereafter, to conduct business in this state, health care benefit managers must register and have an approved registration with the commissioner. ~~((To continue conducting business in this state, previously registered pharmacy benefit managers must submit an application and registration fee to register as a health care benefit manager. Health care benefit managers must annually renew their registration.~~

~~(3-))~~ (2) Health care benefit managers must apply for registration using the commissioner's electronic system, which is available at www.insurance.wa.gov.

~~((4))~~ (3) The registration period is valid from the date of approval of registration through June 30th of the same fiscal year.

~~((5))~~ (4) The registration application is not complete until the commissioner receives the complete registration form, any supporting documentation if required by the commissioner, and paid the ~~((correct))~~ \$200 registration fee.

~~((6))~~ (5) A health care benefit manager may conduct business in this state ~~((, after the health care benefit manager receives))~~ after receiving notice of approval of the registration application from the commissioner.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, § 284-180-220, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-220, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-230 Health care benefit manager renewal. (1) Health care benefit managers ~~((must))~~ annually renew their registrations and pay ~~((the health care benefit manager's))~~ their renewal fee using the commissioner's electronic system, which is available at www.insurance.wa.gov.

(2) Health care benefit managers ~~((must-renew))~~ renewing their registrations ~~((by:~~

~~(a-))~~ must, no later than March 1st of each year, ((submitting a complete renewal form)) submit an electronic renewal report and supporting documents for approval to include:

~~((i) The health care benefit manager's))~~ (a) Their Washington state annual gross ~~((health care benefit manager business))~~ income for health care benefit manager business for the previous calendar year; and

~~((ii))~~ (b) Any additional information, including supporting documents, as required by the commissioner.

~~((b) No later than July 15th of each year, pay the renewal fee as invoiced by the commissioner.~~

~~(e-))~~ (3) Health care benefit managers may amend their annual gross income report for the previous year after the date of submission, but may not amend the report later than May 31st, of the submission year.

(4) On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the ((upcoming fiscal year for)) next July 1st through June 30th fiscal year. Invoices for the renewal fees and electronic payments will be available through the insurance commissioner's electronic filing and payment center. Renewal fee payments are due by July 15th of each year.

~~((3))~~ (5) The renewal application is not complete until the commissioner receives the complete renewal ((form)) report, supporting documentation if required by the commissioner, and the ((correct)) payment of the invoiced renewal fee.

~~((4) Failure to timely submit a completed renewal form and fees may result in delayed renewal or nonrenewal in addition to potential violations if a health care benefit manager provides services without being registered.~~

~~(5))~~ (6) Upon successful completion, the health care benefit manager will receive notice of approval of the renewal application from the commissioner.

~~((6) The renewal))~~ (7) Failure to timely submit a completed renewal report and fee may result in a delayed renewal or nonrenewal in addition to potential violations if a health care benefit manager provides services without being registered.

(8) Each renewed registration is valid for one fiscal year from July 1st through June 30th fiscal year.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, § 284-180-230, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-230, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-240 Providing and updating registration information.

(1) ~~((At the time of registration,))~~ When registering a health care benefit manager must ~~((submit an application))~~ apply with an affidavit affirming its accuracy. ~~((In the))~~ An application ~~((,))~~ for registering as a health care benefit manager must provide for:

(a) The legal name as well as any ~~((and all))~~ additional names that it uses to conduct business;

(b) The names of ~~((all))~~ persons and entities with any ownership or controlling interests, including stockholders, officers and directors, or limited liability company members, managers and officers in the health care benefit manager, (along with completed NAIC Form 11 biographical affidavits and, if requested, an NAIC Approved Third-Party Vendor Background Report;

~~(c) Tax identification numbers;~~

~~(d) Other))~~ and the identity of any entity for which the health care benefit manager has a controlling interest;

(c) A list of tax identification numbers and business licenses and registrations (that the health care benefit manager has held and those) that are active;

~~((e))~~ (d) Identifying any areas of specialty, such as a pharmacy benefit management, radiology benefit management, laboratory benefit management, mental health care benefit management, or any other areas of specialty identified in the application;

~~((f))~~ (e) Contact information for communications regarding registration, renewal and oversight activities, ((including)) to include name of the contact person, address, phone number, ((name of the contact person for the health care benefit manager,)) and valid email address;

~~((g))~~ (f) Name and contact information for the person the health care benefit manager has designated as responsible for compliance with state and federal laws to include name of the contact person, address, phone number, and valid email address;

~~((h))~~ (g) Identify if the health care benefit manager has committed any violations in this or any state or been the subject of an order from a ~~((department of insurance or other state agency))~~ any federal or state agency or court; and

~~((i))~~ (h) Any additional information requested by the commissioner.

(2) Registered health care benefit managers must ~~((ensure that))~~ provide any material change in the information ~~((that they disclosed when they registered))~~ filed with the commissioner ~~((remains current by notifying the commissioner of any changes or additions))~~.

(a) This information includes, but is not limited to:

(i) Any ~~((and all))~~ additional names that the health care benefit manager uses to conduct business; and

(ii) The contact's name and email address for official communications between the commissioner and the health care benefit manager as required in subsection (1)(f) of this section.

(b) Any change in the information provided to obtain ~~((or))~~, renew, nonrenew, or surrender a registration as a health care benefit manager is a material change and must be reported to the commissioner within ~~((thirty))~~ 30 days of ~~((any))~~ the change ~~((, by the health care benefit manager using the commissioner's electronic system))~~.

(c) Any amendments to its annual renewal reports including the reported annual gross income must be reported to the commissioner no later than May 31st. Amended annual renewal reports may be accepted after review by the commissioner.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, § 284-180-240, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 48.02.220 and chapter 19.340 RCW. WSR 18-13-023, § 284-180-240, filed 6/8/18, effective 7/9/18. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-240, filed 12/20/16, effective 1/1/17.]