

Title 245 WAC

HEALTH SERVICES COMMISSION

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WAC

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ORGANIZATION, OPERATIONS, AND PROCEDURES

WAC 245-01-010 Purpose. The purpose of this chapter is to ensure compliance by the Washington health services commission with the provisions of chapters 42.17 and 34.05 RCW.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-010, filed 1/28/94, effective 2/28/94.]

WAC 245-01-020 Definitions. "Act" means the Washington Health Services Act of 1993, chapter 492, Laws of 1993, as amended by chapter 494, Laws of 1993.

"Commission" means the Washington health services commission created by RCW 43.72.020 and also refers to employees of the commission.

"Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including but not limited to, letters, words, pictures, sounds or symbols, or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and

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prints, motion pictures, film and video recordings, magnetic or punch cards, disks, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated. The terms defined in the act shall have the same meaning when used in Title 245 WAC.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-020, filed 1/28/94, effective 2/28/94.]

WAC 245-01-030 Description of organization. The commission is a public agency established under the provisions of chapter 43.72 RCW, which exercises essential government functions. The commission consists of five full-time members appointed by the governor, subject to confirmation by the state senate. One member is designated by the governor as chair. The insurance commissioner serves *ex officio* as a nonvoting member. Commissioners shall have no pecuniary interest in any business subject to regulation by the commission and are subject to chapter 42.18 RCW, the Executive Branch Conflict of Interest Act. Commissioners and the professional commission staff are subject to the public disclosure provisions of chapter 42.17 RCW. The administrative office of the commission is located at the Employment Security Building, 605 Woodland Square Loop Southwest, Lacey, Washington.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-030, filed 1/28/94, effective 2/28/94.]

WAC 245-01-040 Operations and procedures. (1) **Uniform procedure rules:** The commission's practices and procedures are governed by the uniform procedure rules codified in WAC 1-08-005 through 1-08-590, as now or hereafter amended. The commission adopts these rules as its own, subject to any additional rules the commission may add from time to time. The commission reserves the right to make whatever determinations are equitable should any question not covered by its rules come before the commission, as long as these determinations are in accordance with the spirit and intent of the act.

(2) **Commission meetings:**

(a) Regular public meetings of the commission will be held pursuant to the schedule published annually in the *Washington State Register*. The purpose of these meetings shall be to conduct the official, substantive business of the commission;

(b) Additional special public meetings necessary to discharge the official, substantive business of the commission may be called from time to time by the chair or by a quorum of the commission;

(c) Commission staff meetings will be held pursuant to the schedule published annually in the *Washington State Register*. The purposes of these informal meetings are to deal with administrative matters, conduct briefings and other

presentations, present status reports, share information among commissioners and staff, and determine processes for conducting commission business. These meetings will not involve public testimony, formal recommendations, substantive decisions on work program tasks, and other final actions, all of which will be addressed at regular and special commission meetings.

(3) **Quorum:** Three voting commissioners shall constitute a quorum. The act of a majority of the voting commissioners present at any meeting, if there is a quorum, shall be deemed the act of the commission.

(4) **Minutes of meetings:** Minutes shall be kept of the proceedings of the commission.

(5) **Rules of order:** The commission shall generally follow *Robert's Rules of Order*, newly revised, in conducting its regular and special meetings.

(6) **Financial interest:** No employee of the commission shall have a direct financial interest in any business subject to regulation by the commission.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-040, filed 1/28/94, effective 2/28/94.]

WAC 245-01-050 Commission activities exempt from the Environmental Protection Act. The commission has reviewed its authorized activities and has found them to be exempt pursuant to WAC 197-11-040(2), 197-11-150 through 197-11-190 and the State Environmental Policy Act, chapter 43.21C RCW.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-050, filed 1/28/94, effective 2/28/94.]

PUBLIC RECORDS

WAC 245-01-060 Public records available. All public records of the commission are deemed to be available for public inspection and copying at the commission's administrative office pursuant to these rules, except as otherwise provided by RCW 42.17.310, the act, and other laws.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-060, filed 1/28/94, effective 2/28/94.]

WAC 245-01-070 Public records officer. The commission's public records shall be under the charge of the public records officer designated by the commission chair. The person so designated shall be responsible for implementing these rules and regulations regarding the release of public records, and generally for ensuring compliance with the public records disclosure requirements of chapter 42.17 RCW and, in particular, RCW 42.17.250 through 42.17.340.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-070, filed 1/28/94, effective 2/28/94.]

WAC 245-01-080 Office hours. Public records shall be available for inspection and copying at the commission's administrative office, from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Mondays through Fridays, excluding legal holidays.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-080, filed 1/28/94, effective 2/28/94.]

WAC 245-01-090 Requests for public records. In accordance with the provisions of chapter 42.17 RCW requiring agencies to prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records of the commission may be inspected or copied, or copies of such records may be obtained, by members of the public upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the commission which shall be available at its administrative office. A completed form shall be presented to any member of the commission staff at the commission's administrative office during customary office hours. The request shall include the following information:

(a) The name, mailing address, and telephone number of the person requesting the record and the organization represented, if any.

(b) The time of day and calendar date on which the request was made.

(c) A description of the material requested.

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index.

(e) If the requested matter is not identifiable by reference to a current index, an appropriate identification of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the commissioner or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-090, filed 1/28/94, effective 2/28/94.]

WAC 245-01-100 Responses to requests for public records. Within five business days of receiving a public records request, the commission must respond by either:

(1) Providing the records;

(2) Denying the public records request; or

(3) Acknowledging that the commission has received the request and providing a reasonable estimate of the time the commission will require to respond to the request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public records request that is unclear, the commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the commission need not respond to it.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-100, filed 1/28/94, effective 2/28/94.]

WAC 245-01-110 Copying. No fee shall be charged for the inspection of public records. The commission shall charge twenty-five cents per page for providing copies or duplications of public records, and for use of the commis-

sion's photocopy equipment. The charge is the amount necessary to reimburse the commission for its actual copying costs. When copying or duplication of nonstandard items is requested, the fee charged will reflect the total cost, including the time of commission personnel.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-110, filed 1/28/94, effective 2/28/94.]

WAC 245-01-120 Exemptions. (1) The commission reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 245-01-090 is exempt under the provisions of RCW 42.17.310, including, but not limited to, the following:

(a) Personal information in files maintained for commissioners and employees of the commission to the extent that disclosure would violate their right to privacy;

(b) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the commission in connection with any commission action;

(c) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(d) The residential addresses and telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(2) Pursuant to RCW 42.17.260, the commission reserves the right to delete identifying details when it makes available or publishes any public records in all cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The commission will fully justify such deletion in writing.

(3) All public records otherwise exempt by law shall be considered exempt under these rules.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-120, filed 1/28/94, effective 2/28/94.]

WAC 245-01-130 Review or denial of public records requests. Any person who objects to a denial of a public records request or who objects to the reasonableness of the estimate of the time the commission requires to respond to a public records request, shall petition the superior court in the county in which the record is maintained under the provisions of RCW 42.17.340.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-130, filed 1/28/94, effective 2/28/94.]

WAC 245-01-140 Protection of public records. In order to protect the public records in the custody of the commission, the following guidelines shall be followed by any person inspecting such public records:

(1) No public records shall be removed from the commission's administrative office;

(2) Inspection of any public records shall be conducted in the presence of a commissioner or a member of the commission staff;

(3) No public record may be marked or defaced in any manner during inspection;

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(4) Public records maintained in a file jacket or binder, or in chronological order, may not be dismantled except for the purpose of copying, and then only by a commissioner or a member of the commission staff; and

(5) Access to file cabinets, shelves, vaults, and other storage locations is restricted to commissioners and staff.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-140, filed 1/28/94, effective 2/28/94.]

WAC 245-01-150 Records index. (1) The commission shall make available to all persons a current index which provides identifying information for records which have been issued, adopted, or promulgated, as follows:

(a) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the commission;

(b) Administrative staff manuals and instructions to staff that affect any member of the public;

(c) Commission planning policies and goals, and interim and final planning decisions;

(d) Staff, consultant, and scientific reports and studies and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(e) Correspondence and materials referred to therein relating to any regulations, supervisory, or enforcement responsibilities of the commission.

(2) The current index promulgated by the commission shall be available for inspection by all persons under the same rules and on the same conditions as are applied to public records available for inspection.

[Statutory Authority: 1993 c 492. 94-04-046, § 245-01-150, filed 1/28/94, effective 2/28/94.]

**Chapter 245-04 WAC
CERTIFIED HEALTH PLANS**

WAC

PROVIDER SELECTION, TERMINATION, AND DISPUTE RESOLUTION

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**PROVIDER SELECTION, TERMINATION, AND
DISPUTE RESOLUTION**

WAC 245-04-090 Policy statement. (1) RCW 48.43.170 directs the commission to adopt rules requiring certified health plans to publish general criteria for the selection and termination of providers. These rules set forth a process for the fair consideration of the inclusion of providers in the managed care systems of certified health plans.

(2) These rules are intended to ensure that the criteria used by certified health plans for the selection and termination of providers do not have the effect of improperly excluding particular providers based on the category of provider or the population served by the provider. These

rules are also intended to provide a process for including providers in plan networks by requiring plans to inform providers of general selection criteria and by requiring plans to have a process for resolving disputes regarding selection and termination of providers.

(3) Certified health plans shall select providers in a manner allowing consumers access to a full range of providers, promoting the delivery of cost-effective and high quality services, and recognizing that preferences and health care needs of enrollees can be affected by sex, ethnicity, and religion, as well as other factors.

[Statutory Authority: RCW 49.43.170 (2)(4), 43.72.100 (6)(14) and 43.72.040(20). 94-21-063, § 245-04-090, filed 10/17/94, effective 3/1/95.]

WAC 245-04-100 Selection and termination of health care providers. (1) Each certified health plan shall develop and use criteria to select and terminate health care providers. Criteria for the selection and termination of providers must consider the cultural and economic diversity of the plan's service area. A plan shall not discriminate, as further defined in chapter 49 RCW, against providers based on certain factors, including but not limited to, race, religion, ethnicity, and language.

(2) Each certified health plan may designate those parts of its provider selection and termination criteria it deems to be proprietary or competitive in nature. The plan must describe the basis for its designation. Disclosure of criteria is proprietary or anticompetitive if revealing them would have the tendency to cause providers to alter their practice patterns in a manner that would harm efforts to contain health care costs. Disclosure of criteria is proprietary if revealing them would cause the plan's competitors to obtain valuable business information.

(3) Upon request, each certified health plan shall make available to anyone its general criteria for the selection and termination of providers.

(4) If a certified health plan uses unpublished criteria to judge the quality and cost-effectiveness of a provider's practice under any specific program within the plan, the plan may not reject or terminate the provider participating in that program, until the provider has been informed of the criteria that his or her practice fails to meet and is given a reasonable opportunity to conform to the criteria. An opportunity is reasonable if the plan gives the provider participating in that program written information regarding unmet criteria, including the items examined by the plan in determining the provider had failed to meet the criteria. Once the provider has been given this information, the provider must be allowed a minimum of 120 days to meet the criteria. If the provider fails to meet the criteria after 120 days, the provider may be terminated with 60 days notice.

[Statutory Authority: RCW 49.43.170 (2)(4), 43.72.100 (6)(14) and 43.72.040(20). 94-21-063, § 245-04-100, filed 10/17/94, effective 3/1/95.]

WAC 245-04-110 Standards for health care provider selection criteria. (1) Whenever a certified health plan uses cost criteria that rely on a profile of a provider's practice patterns in its health care provider selection process, the plan shall:

(a) Also use other criteria, as appropriate, including, but not limited to, location, patient satisfaction, peer evaluation, and quality of care; and

(b) Include adjustments for case mix and severity in a manner that allows consideration of cost criteria in the context of a provider's overall practice. For example, if cost criteria were the only criteria used by a plan in isolation from other factors, a particular provider's practice pattern might appear inefficient and costly. Further review of other factors could reveal that the cost patterns are the result of treating patients with above average health care needs.

(2) The inability of a plan to establish a profile on a provider due to the absence of sufficient claims data or medical encounter information shall not be the sole grounds for a plan to exclude a provider from joining its network.

(3) To meet statutory requirements that plans permit every category of provider to deliver health services included in the uniform benefits package, every plan must include in its selection criteria specific procedures for consideration of all categories of health care providers as defined in RCW 43.72.010(12), in accordance with the following standards:

(a) The provisions of health services is within the provider's permitted scope of practice; and

(b) The provider agrees to abide by certified health plan standards related to:

(i) Provision, utilization review, quality improvement, and cost containment of health services;

(ii) Management and administrative procedures; and

(iii) Provision of cost-effective and clinically efficacious health services.

(3) Except where the attorney general makes a determination in accord with RCW 48.43.170 (3)(a) and (b) that a certified health plan's exclusion of providers would result in substantial inability of providers to continue their practice, or where required by any other provision of law, including requirements for service in rural areas, a plan is not required to include in its network all providers who meet the plan's selection criteria.

(4) This chapter shall not be construed to require a federally qualified health maintenance organization to contract with or employ the services of providers or to follow procedures contained herein to the extent that 43 U.S.C. § 300e preempts with this chapter.

[Statutory Authority: RCW 49.43.170 (2)(4), 43.72.100 (6)(14) and 43.72.040(20). 94-21-063, § 245-04-110, filed 10/17/94, effective 3/1/95.]

WAC 245-04-115 Resolution of provider disputes.

(1) All participating provider contracts issued by certified health plans must contain specific provisions for the resolution of disputes arising out of the contract, including but not limited to termination of the contract.

(2) The dispute resolution process must provide a range of mechanisms, beginning with a reasonable, timely and effective means of appealing decisions within the plan. If the dispute cannot be resolved within the plan, the option of using mediation or arbitration, at the request of either party, must be available to resolve a dispute. If the dispute between the provider and the plan relates to enrollee care or treatment, the plan shall provide timely, written notice of the dispute to the enrollee.

(3) A certified health plan must also have a process for the resolution of disputes regarding the plan's decision not to include a provider and shall notify the provider of this process.

(4) The commission will not act to arbitrate or mediate disputes between a provider and a certified health plan regarding the plan's decision not to include a provider or regarding any other dispute between a provider and plan arising under, or by reason of, a provider contract or its termination.

[Statutory Authority: RCW 49.43.170 (2)(4), 43.72.100 (6)(14) and 43.72.040(20). 94-21-063, § 245-04-115, filed 10/17/94, effective 3/1/95.]