

**WSR 12-02-089
EXPEDITED RULES
OFFICE OF**

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-01—Filed January 4, 2012, 11:37 a.m.]

Title of Rule and Other Identifying Information: Chapter 284-02 WAC, Insurance commissioner's office.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kacy Scott, Office of the Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0258, AND RECEIVED BY March 6, 2012.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule is part of the commissioner's annual review of Title 284 WAC.

Reasons Supporting Proposal: The propose amendments improve the clarity and accuracy of the chapter.

Statutory Authority for Adoption: RCW 48.02.060 and 34.05.220.

Statute Being Implemented: RCW 34.05.220.

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: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7041; Implementation and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

January 4, 2012

Mike Kreidler

Insurance Commissioner

Chapter 284-02 WAC

~~((DESCRIPTION OF))~~ INSURANCE COMMISSIONER'S OFFICE—~~((ORGANIZATION OPERATIONS AND OBTAINING INFORMATION))~~ GENERALLY

AMENDATORY SECTION (Amending Matter No. R 2010-09, filed 12/22/10, effective 1/22/11)

WAC 284-02-010 ~~((What are the responsibilities of the insurance commissioner and the office of the insurance commissioner (OIC) staff?))~~ SHIBA. ((The insurance commissioner is responsible for regulating the insurance industry and all persons or entities transacting insurance busi-

ness in this state in the public interest. The position of insurance commissioner was established by the legislature as an independent, elective office in 1907. The insurance laws and the authority of the insurance commissioner are found in Title 48 RCW. The insurance commissioner's powers are set forth in chapter 48.02 RCW.

~~(1) General powers and tasks:~~

~~(a) To carry out the task of enforcing the insurance code the commissioner:~~

~~(i) May make rules and regulations governing activities under the insurance code (Title 48 RCW);~~

~~(ii) May conduct investigations to determine whether any person has violated any provision of the insurance code, including both informal and formal hearings;~~

~~(iii) May take action (including levying of fines and revocation of authority to transact business in this state) against an insurance company, fraternal benefit society, charitable gift annuity providers, health maintenance organization, health care service contractor, motor vehicle service contract provider, service contract provider, protection product guarantee providers, self-funded multiple employer welfare arrangement, and life settlement provider; and~~

~~(iv) May issue, refuse to issue or renew, place on probation, revoke, or suspend the licenses of insurance producers, title insurance agents, surplus line brokers, adjusters, insurance education providers, reinsurance intermediaries, and life settlement brokers, or may fine any of them for violations of the insurance code.~~

~~(b) All insurers and other companies regulated under the insurance code must meet financial, legal, and other requirements and must be licensed, registered, or certified by the OIC prior to the transaction of insurance in this state.~~

~~(c) The OIC is responsible for collecting a premium-based tax levied against insurers and other companies transacting insurance business in this state. The funds collected from health care companies are deposited into the state's health services account. All other taxes are deposited into the state's general fund.~~

~~(d) Any person engaged in the marketing or sale of insurance in Washington must hold a license issued by the OIC. The OIC oversees the prelicensing education, testing, licensing, continuing education, and renewal of insurance producer, surplus line broker and title insurance agent licenses.~~

~~(e) Public and independent adjusters must be licensed by the OIC. The OIC is responsible for the processing of licenses, background checks, affiliations, testing, renewals, terminations, and certificates for individuals and business entities, both resident and nonresident, who act as independent or public adjusters in Washington.~~

~~(f) The OIC assists persons who have complaints about companies, insurance producers, surplus line brokers and title insurance agents, or other licensees of the OIC. OIC investigators follow up on consumer complaints, look into circumstances of disputes between consumers and licensees, and respond to questions.~~

~~(g) The OIC publishes and distributes consumer guides and fact sheets to help inform consumers about their choices and rights when buying and using insurance.~~

(2) Orders. The commissioner may issue a cease and desist order based on the general enforcement powers granted

by RCW 48.02.080, or may bring an action in court to enjoin violations of the insurance code.

(3) ~~SHIBA.~~) The OIC offers assistance statewide to consumers regarding health care insurance and health care access through its statewide health insurance benefits advisors (SHIBA) ("~~HelpLine~~") program. Volunteers are trained by OIC employees to provide counseling, education, and other assistance to residents of Washington. Information about SHIBA, including how to become a SHIBA volunteer, can be found on the OIC web site (~~(f)~~)www.insurance.wa.gov(~~-~~).

(4) ~~Publication of tables for courts and appraisers.~~ The insurance commissioner publishes tables showing the average expectancy of life and values of annuities and life and term estates for the use of the state courts and appraisers (RCW 48.02.160).

(5) ~~Copies of public documents.~~ Files of completed investigations, complaints against insurers or other persons or entities authorized to transact the business of insurance by the OIC, and copies of completed rate or form filings are generally available for public inspection and copying during business hours (see chapter 284-03 WAC) at the OIC's office in Tumwater, subject to other applicable law. Access by the public to information and records of the insurance commissioner is governed by chapter 284-03 WAC and the Public Records Act (chapter 42.56 RCW). Information on how to request copies of public documents is available on the OIC web site (www.insurance.wa.gov).

(6) ~~Web site.~~ The insurance commissioner maintains a web site at: www.insurance.wa.gov. Current detailed information regarding insurance, persons and entities authorized to transact insurance business in this state, consumer tips, links to Washington's insurance laws and rules, a list of publications available to the public, and other valuable information can be found on the web site.

(7) ~~Toll-free consumer hotline.~~ Members of the OIC staff respond to inquiries of consumers who telephone the agency's toll-free consumer hotline at 1-800-562-6900.

(8) ~~Location of offices.~~ The OIC's headquarters office is located in the insurance building on the state Capitol campus in Olympia. Branch offices are located in Tumwater, Seattle and Spokane. Addresses for the office locations can be found on the OIC web site (www.insurance.wa.gov) or by calling the commissioner's consumer hotline (1-800-562-6900).

(9) ~~Antifraud program.~~ Beginning in 2007, the OIC (in partnership with the Washington state patrol, county prosecutors, and the state attorney general's office) will investigate and assist in prosecuting fraudulent activities against insurance companies. Information about this program can be found on the OIC web site (www.insurance.wa.gov)).

AMENDATORY SECTION (Amending Matter No. R 2010-09, filed 12/22/10, effective 1/22/11)

WAC 284-02-070 ((How does the OIC conduct) Hearings?) (1) ((~~Generally.~~)) (a) Hearings of the OIC are conducted according to chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act ((~~chapter 34.05 RCW~~). In addition to general hearings conducted pursuant to RCW 48.04.010;)) Two specific types of hearings

are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings ((~~or contested case hearings~~)). Adjudicative proceedings include both contested case hearings and other types of adjudicative proceedings which are required by law. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand ((or request) a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) A hearing((s)) can also be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) ((~~Requests~~)) Demands for hearings must be in writing and delivered to the Tumwater office of the OIC((The request must specify how the person making the demand has been aggrieved by the commissioner, and must specify the grounds to be relied upon as the basis for the relief sought)) by mail, hand delivery, facsimile, or e-mail. Unless a person aggrieved by an order of the commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived. A hearing is considered demanded when the demand for hearing is received by the commissioner.

(c) Accommodation will be made for persons needing assistance((, for example, where English is not their primary language, or for hearing-impaired persons)) due to difficulty with language or disability.

(2) ((~~Proceedings~~)) Procedural and substantive requirements for adjudicative proceedings including contested cases ((or adjudicative hearings)).

(a) Provisions ((specifically relating)) applicable to ((disciplinary)) adjudicative proceedings are contained in chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act, and chapter 10.08 WAC.

(b) Substantive provisions specifically relating to action taken against persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. ((Provisions applicable to other adjudicative proceedings are contained in chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The uniform rules of practice and procedure appear in Title 10 of the Washington Administrative Code.)) The grounds for disciplinary action against insurance producers, title insurance agents and adjusters are contained in RCW 48.17.530 and 48.17.540(1); grounds for disciplinary action against surplus line brokers are contained in RCW 48.15.140; grounds for similar action against insurance companies are contained in RCW 48.05.130 and 48.05.140; grounds for actions against fraternal benefit societies are found ((~~at~~)) in RCW ((48.36A.300 (domestic) and RCW)) 48.36A.310 ((foreign)); grounds for actions against life set-

tlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; ~~((and))~~ grounds for action against health maintenance organizations are contained in RCW 48.46.130~~((:))~~; grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses; grounds for action against unauthorized individuals or entities are found generally throughout Title 48 RCW.

~~((b))~~ (c) The ~~((insurance))~~ commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

~~((e))~~ (d) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a presiding officer~~((; or))~~. The commissioner may appoint a chief hearing officer who will have primary responsibility for the conduct of hearings, the procedural matters preliminary thereto, and the preservation of hearing records. The position of hearing officer does not report to any of the major divisions of the OIC. The commissioner may also use the services of an administrative law judge in accordance with chapter 34.12 RCW and chapter 34.05 RCW, the Administrative Procedure Act ~~((chapter 34.05 RCW))~~. The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464) and entry of a final order.

(ii) The hearing will be recorded by any method chosen by the presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court after confirmation of payment of all costs for the transcription by the appellant.

(iii) The ~~((insurance))~~ commissioner or the presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry under oath.

~~((Unless a person aggrieved by an order of the insurance commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived (RCW 48.04.010(3)).~~

~~((v))~~ Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the presiding officer.

~~((d))~~ (e) Discovery is available in adjudicative proceedings ~~((and contested cases))~~ pursuant to Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission of the presiding officer or the administrative law judge in accordance with RCW 34.05.446(2).

(i) Civil Rules 26 through 37 are adopted and incorporated by reference in this section, with the exception of CR 26 (j) and (3) and CR 35, which are not adopted for purposes of this section.

(ii) The presiding officer or administrative law judge is authorized to make any order that a court could make under CR 37 (a) through (e), including an order awarding expenses of the motion to compel discovery or dismissal of the action.

(iii) This rule does not limit the presiding officer's or administrative law judge's discretion and authority to condition or limit discovery as set forth in RCW 34.05.446(3).

(3) **Rule-making hearings.** Rule-making hearings are conducted based on requirements found in chapter 34.05 RCW, the Administrative Procedure Act ~~((chapter 34.05 RCW))~~ and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept comments on proposed rules by mail, ~~((electronic))~~ telefacsimile ~~((transmission))~~, or ~~((electronic mail))~~ e-mail but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site ~~((http))~~ www.insurance.wa.gov ~~((http))~~.

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-100 ((How can an interested person) Petition for adoption, amendment, or repeal of rules(?)).

~~((As authorized by the Administrative Procedure Act.))~~ Any ~~((interested))~~ person may petition the insurance commissioner requesting the adoption, amendment, or repeal of any rule ~~((f))~~ using the procedures set forth in RCW 34.05.-330~~((g))~~. The petition must be in writing, dated, and signed by the petitioner. In addition to the information listed in RCW 34.05.330(3), each petition must include the following information:

(a) The name and address of the person requesting the action, and, if relevant, the background and identity of the petitioner and the interest of the petitioner in the subject matter of the rule;

(b) The full text of any proposed new or amendatory rule and the citation and caption of any existing rule to be amended or repealed;

(c) A narrative explaining the purpose and scope of any proposed new or amendatory rule including a statement generally describing the statutory authority relied upon by the petitioner, how the rule is to be implemented, the reasons for the proposed action, accompanied by necessary or pertinent data in support of the new rule or amendment; and

(d) Statements from other persons in support of the action petitioned are encouraged, if they help the OIC to understand why the new rule or amendment is needed.

~~(2)((a) Within sixty days after the petition to adopt, amend, or repeal any rule is submitted, the OIC either:~~

~~(i) Will formally deny the petition in writing to the person requesting the action, stating the reasons for the denial, and, if appropriate, will state any alternative means by which the insurance commissioner will address concerns raised; or~~

~~(ii) Will initiate rule-making proceedings in accordance with the Administrative Procedure Act.~~

~~(b) If the insurance commissioner denies a petition to repeal or amend a rule, the petitioner may appeal the denial to the governor, within thirty days after the denial (RCW 34.05.330(2)).~~

~~(3) If the insurance commissioner determines it to be in the interest of the public, a hearing may be held for the further consideration and discussion of the requested adoption, amendment, or repeal of any rule.~~

(4)) For information concerning the subjects of rules being proposed, or to request paper copies of rules or copies of materials presented to the commissioner during the rule-making process, members of the public may contact the agency's rules coordinator. The name, address, and phone number of the rules coordinator are available on the OIC web site and are published at least annually in the *Washington State Register*. Complete information regarding all rules being proposed is available on the OIC web site ((f))www.insurance.wa.gov((g)).

AMENDATORY SECTION (Amending Matter No. R 2008-10, filed 7/2/08, effective 8/2/08)

WAC 284-02-105 ~~((What does ")))~~Sending(")) or ~~((("))~~delivery("include?) **of information to the commissioner.** ~~((Throughout))~~ For purposes of complying with Titles 48 RCW and 284 WAC, whenever written notice to the commissioner is required ((to be sent or delivered to the commissioner)), "sending" or "delivery" of the written notice includes transmitting the required information in writing and, where appropriate, on forms designated by the commissioner for that purpose via first class mail, commercial parcel delivery company, ((electronic)) telefacsimile, or e-mail, unless the relevant requirement specifies sending the written notice in some specific manner, such as via first class mail, postage prepaid. Delivery occurs when the commissioner's staff receives the written notice by a stamp confirming receipt, signing a receipt, or opening an e-mail.

NEW SECTION

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

Old WAC Number	New WAC Number
284-02-070	284-02-035

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-02-023	How is the OIC organized?
WAC 284-02-025	How is the OIC funded?
WAC 284-02-030	How can service of process over foreign and alien insurers be made?
WAC 284-02-040	Where can information about applying for a license as an adjuster or insurance producer, surplus line broker or title insurance agent be found?
WAC 284-02-050	Where can information and applications for admission as an authorized insurer, fraternal benefit society, health care service contractor, health maintenance organization, viatical settlement provider, and for other entities required to be authorized to transact the business of insurance be found?
WAC 284-02-060	Where can information regarding filing a complaint against a company, insurance producer, surplus line broker, title insurance agent, adjuster, or other person or entity authorized by the OIC be found?
WAC 284-02-080	What publications and information are available from the OIC?