

WSR 21-20-107
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-17—Filed October 4, 2021, 2:23 p.m.]

Original Notice.

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

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

Hearing Location(s): On Wednesday, November 24, 2021, at 3:30 p.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website here <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 Zoom platform.

Date of Intended Adoption: November 29, 2021.

Submit Written Comments to: Jane Beyer, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 24, 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 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner is adopting rules relating to the exemption for HCSM found in RCW 48.43.009 to reduce confusion and increase transparency.

Reasons Supporting Proposal: The rule is adopting new WAC to be consistent with federal law, increase transparency, and make it easy to locate all applicable rules related to health care sharing ministries 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 98504-0260, 360-725-7043; 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.

Background information: OIC has developed this rule, relating to the exemption for HCSM found in RCW 48.43.009 to incorporate federal law adding clarity and setting expectations for health care sharing ministries.

Legal obligations: The Washington Administrative Procedure Act (APA)¹ requires that "significant legislative rules" be evaluated to determine if the probable benefits of a proposed rule making exceed its probable costs. Taking into account both quantitative and qualitative information and analysis². A draft of this determination must be available at the time the filing for the rule's preproposal or CR-102.

The final version of this document must be completed prior to final rule adoption and included in the rule-making file.

¹ Chapter 34.05 RCW.

² RCW 34.05.328 (1)(c).

Determination of exemption: OIC has determined that under:

- RCW 34.05.328 (5) (b) (iii), 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).
- RCW 34.05.328 (5) (b) (v), the content of the rule is explicitly and specifically dictated by statute and is exempt from RCW 34.05.328 (1) (c).

Rationale: The scope of the rule making is limited to develop rules to incorporate federal law regarding the definition of an HCSM and set expectations on responding to inquiries of the OIC.

Determination: OIC determines that this rule is exempt from cost-benefit analysis requirements.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW [no information supplied].

Explanation of exemptions: **Background information:** OIC has taken enforcement action against several entities that have marketed their products as HCSM, but these entities have not met the statutory and federal definition required for exemption under the Insurance Code as an HCSM. This rule making will add additional clarity, set expectations, and provide direction to entities that are considering marketing in Washington state by defining some of the terms utilized in the federal definition that was adopted into the statute.

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 industry³ ..." 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 businesses⁴."

³ RCW 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

⁴ 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 19.85.061 - this rule making is being adopted solely to conform and/or comply with federal statute or regulations.
- 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(3) - provides exclusions under RCW 34.05.310 (4) (c), it incorporates existing rules/statutes [statutes] by reference; and

- RCW 19.85.025(3) - provides exclusions under RCW 34.05.310 (4) (d), it corrects/clarifies existing language.

Rationale: This rule amends existing rules and add[s] new sections relating to the exemption for HCSM found in RCW 48.43.009 and the sale of HCSM plans by licensed producers.

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

October 4, 2021
Mike Kreidler
Insurance Commissioner

OTS-3371.2

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) "For-profit organization" means an organization in which persons are permitted to have an ownership or partnership interest, such as corporate stock. It includes sole proprietorships, corporations, and other entities that provide for ownership interests.
- (5) "Generally accepted accounting principles" means the compulsory accrual method of accounting for a public company.
- (6) "Health care sharing ministry" means:
 - (a) An organization described in Section 501 (c) (3) and is exempt from taxation under Section 501(a);
 - (b) 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) Members retain membership in the health care sharing organization 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) 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.

(7) "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.

(8) "Nonprofit organization" means organizations meeting specified requirements that qualify for exemption under subsections other than Section 501 (c) (3).

(9) "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.

(10) "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.

(11) "Share medical expenses" or "sharing medical expenses" means providing for the medical needs and financial needs related to medical expenses of a participant through member contributions.

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NEW SECTION

WAC 284-43-8220 Prompt reply to the commissioner required.

Health care sharing ministries shall timely reply in writing to an inquiry of the commissioner regarding their compliance with RCW 48.43.009, any potential violations of RCW 48.05.030(1) and 48.15.020(1), and any 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.

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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.

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