

**WSR 21-21-100
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commission Matter R 2021-15—Filed October 19, 2021, 5:43 p.m.]

Supplemental Notice to WSR 21-19-139.

Preproposal statement of inquiry was filed as WSR 21-14-076.

Title of Rule and Other Identifying Information: FAIR (fair access to insurance requirements) plan committee members.

Hearing Location(s): On December 2, 2021, at 2:30 p.m. Zoom meeting: Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/fair-plan-committee-members-r-2021-15>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: December 3, 2021.

Submit Written Comments to: Shari Maier, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by December 2, 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 December 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update references to associations involved in the plan administration and make technical changes that should make the rules clearer and easier to follow.

Reasons Supporting Proposal: The two associations currently named in the rules merged and operate under a new name.

Statutory Authority for Adoption: RCW 48.02.060, 48.01.030, 48.18.480.

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 40255, Olympia, WA 98504-0255, 360-725-7173; Implementation: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 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. OIC has determined that under this rule is exempt from a cost-benefit analysis under RCW 34.05.328 [(5)] (b) (iv):

- RCW 34.05.328 (5) (b) (iv) - this rule making will only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect and is exempt from RCW 34.05.328 (1) (c).

This rule making involves replacing references to two associations by name to a generic association reference. Additional technical changes are included to improve rule clarity.

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 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: 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 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) (d), it corrects/clarifies existing language.

This rule making involves replacing references to two associations by name to a generic association reference. Additional technical changes are included to improve rule clarity.

OIC determines that this rule is exempt from small business economic impact statement requirements.

October 19, 2021
Mike Kreidler
Insurance Commissioner

OTS-3261.3

AMENDATORY SECTION (Amending WSR 14-21-179, filed 10/22/14, effective 11/22/14)

WAC 284-19-140 Administration. (1) This program shall be administered by a governing committee (referred to as the committee) of the facility, subject to the supervision of the commissioner, and operated by a manager appointed by the committee.

(2) The committee consists of nine members, including ~~((five))~~ six insurers, ~~((elected from each of the following))~~ as follows:

(a) ~~((American Insurance Association (one member);))~~ Property insurers represented by any trade association(s) shall designate or elect three members. Any such trade association not already represented on the committee may request representation by contacting the FAIR plan manager. The allocation of these three committee members will be made in accordance with applicable committee operating procedures and directives;

(b) ~~((Property Casualty Insurers Association of America (two members);~~

~~(+))~~ All other stock insurers shall elect ((+)) one member((+)) by a majority vote counted on a weighted basis in accordance with each

insurer's premiums written and the aggregate premiums written for all insurers in this respective group; ((and

~~(d-))~~ (c) All other nonstock insurers shall elect ((+) one member((+-)) by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in this respective group;

(d) A sixth member ((shall)) must be an insurer designated as the service insurer under the program((-)), and the commissioner shall designate a sixth member if there is more than one service insurer((-));

(e) The other three members are individuals who are appointed by the commissioner to serve, none of whom have a direct or indirect interest in any insurer except as a policyholder((-). The individual members serve for a period of one year or until their successors are appointed.)) ;

(f) Not more than one insurer in a group under the same management or ownership shall serve on the committee at the same time((-)); and

(g) One of the six insurers on the governing committee ((shall)) must be a domestic insurer.

(3) The governing committee may issue operating procedures and other directives to carry out the purposes of this plan and directives of the commissioner.

(4) Each person serving on the committee or any subcommittee, each member of the facility, and each officer and employee of the facility shall be indemnified by the facility against all costs and expenses actually and necessarily incurred in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being or having been a member of the committee, or a member or officer or employee of the facility except in relation to matters as to which he or she has been judged in such action, suit, or proceeding to be liable by reason of willful misconduct in the performance of duties as a member of the committee, or a member or officer or employee of the facility. This indemnification does not apply to any loss, cost, or expense on insurance policy claims under the program. Indemnification is not exclusive of other rights to which such member or officer may be entitled as a matter of law.

(5) Members on the committee serve for a period of one year or until successors are elected, designated or appointed, as applicable.

[Statutory Authority: RCW 48.02.060 and 48.01.030. WSR 14-21-179 (Matter No. R 2014-06), § 284-19-140, filed 10/22/14, effective 11/22/14. Statutory Authority: RCW 48.02.060. WSR 98-13-095 (Matter No. R 98-10), § 284-19-140, filed 6/16/98, effective 7/17/98. Statutory Authority: RCW 48.01.030, 48.02.060, 48.18.480, and 48.30.020. WSR 79-08-019 (Order R 79-3), § 284-19-140, filed 7/11/79; Order R-69-1, § 284-19-140, filed 1/28/69.]

AMENDATORY SECTION (Amending WSR 98-13-095, filed 6/16/98, effective 7/17/98)

WAC 284-19-150 Annual and special meetings. (1) There shall be an annual meeting of the insurers on a date fixed by the committee. ~~((The three associations (WAC 284-19-140(2)) shall designate or elect their representatives to the committee. The two nonassociation groups~~

~~of companies shall elect their respective representatives by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in the respective groups of companies. Representatives on the committee shall serve for a period of one year or until successors are elected or designated.)~~)

(2) A special meeting may be called at a time and place designated by the committee or upon the written request to the committee of any ten insurers, not more than one of which may be a group under the same management or ownership.

(3) Twenty days' notice of the annual or special meeting ~~((shall))~~ must be given in writing by the committee to the insurers. A majority of the insurers constitutes a quorum. Voting by proxy is permitted. Notice of any meeting ~~((shall))~~ must be accompanied by an agenda for the meeting.

(4) Any matter, including amendment of this program, may be proposed and voted upon by mail, provided the procedure is unanimously authorized by the members of the committee present and voting at any meeting of the committee. If approved by the committee, notice of any proposal is mailed to the insurers not less than ~~((twenty))~~ 20 days prior to the final date fixed by the committee for voting.

(5) At any regular or special meeting at which the vote of the insurers is or may be required on any proposal, including amendment to this program, or any vote of the insurers which may be taken by mail on any proposal, such votes ~~((shall))~~ must be cast and counted on a weighted basis in accordance with each insurer's premiums written. A proposal becomes effective when approved by at least two-thirds of the votes cast on the weighted basis, except amendments to this program that will require administrative action by the commissioner.

[Statutory Authority: RCW 48.02.060. WSR 98-13-095 (Matter No. R 98-10), § 284-19-150, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-150, filed 1/28/69.]