

WSR 21-19-136
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-08—Filed September 21, 2021, 2:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-062.

Title of Rule and Other Identifying Information: Using respectful language.

Hearing Location(s): On Tuesday, October 26, 2021, at 11:00 a.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website here <https://www.insurance.wa.gov/using-respectful-language-r-2021-08>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: October 28, 2021.

Submit Written Comments to: Simon Casson, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 25, 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.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 275, Laws of 2020 (HB 2390) amended several statutes to reflect respectful language as identified under current law by replacing references to "handicapped persons" with references to "individuals with disabilities."

Reasons Supporting Proposal: The agency needs to develop a rule on this topic because: HB 2390 recently passed that amends several statutes to reflect respectful language as identified under current law by replacing references to "handicapped persons" with references to "individuals with disabilities." To utilize respectful language and align with the updated statutory language, OIC should amend WAC 284-50-330.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: Chapter 275, Laws of 2020 (HB 2390).

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: Simon Casson, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7038; Implementation: Melanie Anderson, P.O. Box 40255, Tumwater, WA 98504-0260, 360-725-7000; and Enforcement: Melanie Anderson or Charles Malone, P.O. Box 40255, Tumwater, 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. OIC has determined that under 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 amends WAC 284-50-330 to reflect respectful language as identified under current law by replacing references to "handicapped persons" with references to "individuals with disabilities." There is only one section within Title 284 WAC that utilizes the term "handi-

capped persons" (WAC 284-50-330(8)). This WAC is related to one of the statutes (RCW 48.20.420) that the bill amends. The change does not alter the underlying meaning of the WAC, and therefore is exempt from a cost-benefit analysis under RCW 34.05.328 [(5)](b)(iv).

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 (SBEIS) must include "... a brief description of the reporting, record-keeping, 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 amends WAC 284-50-330 to reflect respectful language as identified under current law by replacing references to "handicapped persons" with references to "individuals with disabilities." There is only one section within Title 284 WAC that utilizes the term "handicapped persons" (WAC 284-50-330(8)). This WAC is related to one of the statutes (RCW 48.20.420) that the bill amends. The change does not alter the underlying meaning of the WAC, and therefore is exempt from a small business impact statement under RCW 19.85.025(3).

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

September 21, 2021
Mike Kreidler
Insurance Commissioner

OTS-3293.1

AMENDATORY SECTION (Amending WSR 17-18-102, filed 9/6/17, effective 10/7/17)

WAC 284-50-330 General rules as to minimum standards. (1) A "noncancellable," "guaranteed renewable" or "noncancellable and guaranteed renewable" policy shall not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of

premium. The policy shall provide that in the event of the insured's death the spouse of the insured, if covered under the policy, shall become the insured.

(2) The terms "noncancellable," "guaranteed renewable" or "noncancellable and guaranteed renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of WAC 284-50-375(1). The terms "noncancellable" or "noncancellable and guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums set forth in the policy until the age of 65 or to eligibility for medicare, during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force: Provided, however, any accident and health or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy only to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively or regularly employed. Except as provided above, the term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums until the age of 65 or to eligibility for medicare, during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force, except that the insurer may make changes in premium rates by classes: Provided, however, any accident and health or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy only to age 60, if at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

(3) In a family policy covering both husband and wife the age of the younger spouse may be used as the basis for meeting the age and durational requirements of the definitions of "noncancellable" or "guaranteed renewable." However, this requirement shall not prevent termination of coverage of the older spouse upon attainment of the stated age limit (e.g., age 65) so long as the policy may be continued in force as to the younger spouse to the age or for the durational period as specified in said definition.

(4) When accidental death and dismemberment coverage is part of the insurance coverage offered under the contract, the insured shall have the option to include all insureds under such coverage and not just the principal insured.

(5) If a policy contains a status type military service exclusion or a provision which suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to such person on a pro rata basis.

(6) In the event the insurer cancels or refuses to renew, policies providing pregnancy benefits shall provide for an extension of benefits as to pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force.

(7) Policies providing convalescent or extended care benefits following hospitalization shall not condition such benefits upon admission to the convalescent or extended care facility with a period of less than fourteen days after discharge from the hospital.

(8) In accord with RCW 48.20.420, coverage shall continue for any dependent child who is incapable of self-sustaining employment due to developmental or physical disability (~~(or physical handicap)~~), on the date that such child's coverage would otherwise terminate under the policy due to the attainment of a specified age limit for children, and who is chiefly dependent on the insured for support and maintenance. The policy may require that within 31 days of such date the company receive due proof of such incapacity and dependency in order for the insured to elect to continue the policy in force with respect to such child, or that a separate converted policy be issued at the option of the insured or policyholder.

(9) Any policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy, after benefits for the recipient's own expenses have been paid.

(10) A policy may contain a provision relating to recurrent disabilities; provided, however, that no such provision shall specify that a recurrent disability be separated by a period greater than six months.

(11) Accidental death and dismemberment benefits shall be payable if the loss occurs within no less than ninety days from the date of the accident, irrespective of total disability. Disability income benefits, if provided, shall not require the loss to commence less than thirty days after the date of accident, nor shall any policy which the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the policy was in force.

(12) Specific dismemberment benefits shall not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

(13) Any accident only policy providing benefits which vary according to the type of accidental cause shall prominently set forth in the outline of coverage the circumstances under which benefits are payable which are lesser than the maximum amount payable under the policy.

(14) All medicare supplement policies providing in-hospital benefits only shall include in their provided benefits the initial Part A medicare deductible as established from time to time by the Social Security Administration. Premiums may be reduced or raised to correspond with changes in the covered deductible.

(15) Termination of the policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(16) As an alternative to hospitalization or institutionalization of an insured and with the intent to cover placement of the insured patient in the most appropriate and cost-effective setting, every individual disability insurance policy or contract issued, amended, or renewed on or after January 1, 1995, which provides coverage for hospitalization or other institutional expenses to a resident of this state shall include substitution of home health care, provided in lieu of hospitalization or other institutional care, furnished by home health, hospice, or home care agencies licensed under chapter 70.127 RCW, at equal or lesser cost.

(a) In addition, such expenses may include coverage for durable medical equipment which permits the insured to stay at home, care provided in Alzheimer's centers, adult family homes, assisted living facilities, congregate care facilities, adult day health care, home health, hospice, and home care, or similar alternative care arrangements which provide necessary care in less restrictive or less expensive environments.

(b) Substitution of less expensive or less intensive services shall be made only with the consent of the insured and upon the recommendation of the insured's attending physician or licensed health care provider that such services will adequately meet the insured patient's needs. The decision to substitute less expensive or less intensive services shall be determined based on the medical needs of the individual insured patient.

(c) An insurer may require that home health agencies or similar alternative care providers have written treatment plans which are approved by the insured patient's attending physician or other licensed health care provider.

(d) Coverage may be limited to no less than the maximum benefits which would be payable for hospital or other institutional expenses under the policy or contract, and may include all deductibles and co-insurances which would be payable by the insured under the hospital or other institutional expense coverage of the insured's policy or contract.

(e) This subsection shall not apply to long-term care, medicare supplement, or disability income protection insurance policies or contracts. This subsection shall not apply to guaranteed renewable disability insurance policies or contracts issued prior to January 1, 1995.

[Statutory Authority: RCW 48.02.060. WSR 17-18-102 (Matter No. R 2017-08), § 284-50-330, filed 9/6/17, effective 10/7/17. Statutory Authority: RCW 48.01.030, 48.02.060, 48.44.050, 48.44.020, 48.46.200 and 48.46.060. WSR 94-19-015 (Order R 94-16), § 284-50-330, filed 9/9/94, effective 10/10/94; Order R-76-4, § 284-50-330, filed 10/29/76, effective 3/1/77.]