



# PROPOSED RULE MAKING

## CR-102 (October 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: October 04, 2021

TIME: 2:23 PM

WSR 21-20-107

**Agency:** Office of the Insurance Commissioner

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 21-14-097** \_ ; or

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1);** or

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Health care sharing ministries rulemaking

**Insurance Commissioner Matter R 2021-17**

**Hearing location(s):**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b> (be specific)	<b>Comment:</b>
Wednesday, November 24, 2021	3:30 PM	Zoom Meeting: Detailed information for attending the Zoom meeting posted on the OIC website here: <a href="https://www.insurance.wa.gov/health-care-sharing-ministries-r-2021-17">https://www.insurance.wa.gov/health-care-sharing-ministries-r-2021-17</a>	Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

**Date of intended adoption:** 11/29/21 \_ (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Jane Beyer

Address: PO Box 40260, Olympia, WA 98504-0260

Email: rulescoordinator@oic.wa.gov

Fax: 360-586-3109

Other:

By (date) 11/24/21

**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

Other:

By (date) 11/24/21

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Commissioner is adopting rules relating to the exemption for health care sharing ministries (HCSM) found in 48.43.009 to reduce confusion and increase transparency.

**Reasons supporting proposal:** The rule is adopting new WACs 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 RCW 48.15.015.

**Statute being implemented:** RCW 48.43.009

**Is rule necessary because of a:**

Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Mike Kreidler, Insurance Commissioner

Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Jane Beyer	PO Box 40260, Olympia, WA 98504-0260	360-725-7043
Implementation:	Molly Nollette	PO Box 40260, Olympia, WA 98504-0260	360-725-7000
Enforcement:	Charles Malone	PO Box 40260, Olympia, WA 98504-0260	360-725-7000

**Is a school district fiscal impact statement required under RCW 28A.305.135?**

Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain:

## Background information

The Office of the Insurance commissioner has developed this rule, relating to the exemption for health care sharing ministries (HCSM) found in 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)<sup>1</sup> requires that “significant legislative rules” be evaluated to determine if the probable benefits of a proposed rulemaking exceed its probable costs. Taking into account both quantitative and qualitative information and analysis<sup>2</sup>. 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 rulemaking file.

## Determination of exemption

The Office of the Insurance commissioner 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 rulemaking is limited to develop rules to incorporate federal law regarding the definition of a health care sharing ministry and set expectations on responding to inquiries of the OIC.

## Determination

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

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<sup>1</sup> Chapter 34.05 RCW

<sup>2</sup> RCW 34.05.328(1)(c)

## Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

## Background information

The OIC has taken enforcement action against several entities that have marketed their products as Health Care Sharing Ministries, but these entities have not met the statutory and federal definition required for exemption under the Insurance Code as a Health Care Sharing Ministry. This rulemaking 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

RCW 19.85 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 industry<sup>3</sup>..." 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 businesses<sup>4</sup>".

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.

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

<sup>4</sup> RCW 19.85.040: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>

- RCW 19.85.025(3) – provides exclusions under RCW 34.05.310 (4)(c), it incorporates existing rules/statutes by reference.
- 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 new sections relating to the exemption for health care sharing ministries found in 48.43.009 and the sale of HCSM plans by licensed producers.

## Determination

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

### COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
 Address:  
 Phone:  
 Fax:  
 TTY:  
 Email:  
 Other:

**Date:** October 4, 2021

**Name:** Mike Kreidler

**Title:** Insurance Commissioner

**Signature:**



**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.

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.

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.