



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: 2:37 PM

WSR 21-20-109

Agency: Office of the Insurance Commissioner

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR** 21-14-096 ; 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) Student Health Plans

Insurance Commissioner Matter R 2021-13

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
Tuesday, November 9, 2021	3:30	Zoom: Detailed information for attending the Zoom meeting will be posted on the OIC website here: https://www.insurance.wa.gov/student-health-plans-r-2021-13	Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of intended adoption: 11/15/21 _ (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Shari Maier
Address: PO Box 40260, Olympia, WA 98504-0260
Email: rulescoordinator@oic.wa.gov
Fax: 360-725-7171
Other:
By (date) 11/9/21

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) 11/8/21

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Commissioner is adopting rules to amend existing rules as necessary to implement Chapter 53, Laws of 2021 (House Bill 1009), ensure existing regulations comply with the requirement of this legislation regarding student health plan coverage, and adopt technical corrections.

Reasons supporting proposal: House Bill 1009 recently passed and was signed into law (Chapter 53, Laws of 2021) requiring that student health plans which provide maternity coverage must also provide substantially similar coverage for termination of pregnancy. The OIC needs to update existing rules to align with the legislation's requirements.

Statutory authority for adoption: RCW 48.02.060 and Chapter 53, Laws of 2021 (House Bill 1009)

Statute being implemented: RCW 48.43.073

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:	Shari Maier	PO Box 40260, Olympia, WA 98504-0260	360-725-7173
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: This rule is exempt from requirements for a CBA under RCW 34.05.328(5)(b)(iii), as 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).

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)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((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

- 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(4) – the businesses that must comply with the proposed rule are not small businesses, under chapter 19.85 RCW. The OIC has found that none of the existing health insurance issuers may be considered small businesses under RCW 19.85.020(2).

Explanation of exemptions, if necessary: The Commissioner is adopting this rule to amend existing rules as necessary to implement Chapter 53, Laws of 2021 (House Bill 1009), ensure existing regulations comply with the requirement of this legislation regarding student health plan coverage, and adopt technical corrections.

House Bill 1009 recently passed and was signed into law (Chapter 53, Laws of 2021) requiring that student health plans which provide maternity coverage must also provide substantially similar coverage for termination of pregnancy. The OIC needs to update existing rules to align with the legislation's requirements.

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 industry¹..." 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 businesses²".

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)(e), the provisions of this rule were dictated by statute.
- RCW 19.85.025(4) – the businesses that must comply with the proposed rule are not small businesses, under chapter 19.85 RCW. The OIC has found that none of the existing health insurance issuers may be considered small businesses under RCW 19.85.020(2).

¹ Chapter 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>

Rationale

To comply with House Bill 1099 that passed in 2020 legislative session and was signed into law, this rule updates existing regulations so that Health insurance carriers offering maternity coverage to also provide similar coverage for termination of pregnancy.

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:



AMENDATORY SECTION (Amending WSR 19-24-039, filed 11/26/19, effective 12/27/19)

WAC 284-43-7210 Definitions. (1) "Contraceptive services" means consultations, examinations, procedures, and other health care services to obtain contraceptive supplies or voluntary sterilization. This includes prescribing, dispensing, inserting, delivering, distributing, administering, or removing contraceptive supplies and voluntary sterilization procedures.

(2) "Contraceptive supplies" means all contraceptive drugs, devices, and other products approved by the Federal Food and Drug Administration. This includes over-the-counter contraceptive drugs, devices, and products approved by the Federal Food and Drug Administration.

(3) "Cost-sharing" means any expenditure required of a covered person for covered services or supplies, including applicable taxes. Cost-sharing includes deductibles, coinsurance, copayments, or similar charges. Cost-sharing does not include premiums, balance billing amounts for nonnetwork providers, or spending for noncovered services or supplies.

(4) "Covered person" or "enrollee" has the same meaning as defined in RCW 48.43.005.

(5) "Gender expression" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

(6) "Gender identity" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

(7) "Medical management" or "medical management techniques" has the same meaning as defined in RCW 48.165.010.

(8) "Reproductive health care services" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

(9) "Reproductive system" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

(10) "Well-person preventative visits" has the same meaning as defined in (~~section 3, chapter 399, Laws of 2019~~) RCW 48.43.072.

AMENDATORY SECTION (Amending WSR 19-24-039, filed 11/26/19, effective 12/27/19)

WAC 284-43-7220 Coverage required. A health plan must provide coverage for all services and supplies required under RCW 48.43.072 and 48.43.073. (~~Effective January 1, 2021,~~) A student health plan must also provide coverage for all services and supplies required under RCW 48.43.072 and 48.43.073.

(1) Required coverage of contraceptive services and supplies includes, but is not limited to:

(a) All prescription and over-the-counter contraceptive drugs, devices, and other products approved by the Federal Food and Drug Administration;

(b) Voluntary sterilization procedures; and

(c) The consultations, examinations, procedures, and medical services that are necessary to prescribe, dispense, insert, deliver, distribute, administer, or remove the drugs, devices, and other products or services in (a) and (b) of this subsection.

(2) A health plan or student health plan that provides coverage for maternity care or services must also provide a covered person with substantially equivalent coverage to permit the abortion of a pregnancy. For the coverage to be substantially equivalent, a health plan or student health plan must not apply cost-sharing or coverage limitations differently for abortion and related services than for maternity care and its related services unless the difference provides the enrollee with access to care and treatment commensurate with the enrollee's specific medical needs, without imposing a surcharge or other additional cost to the enrollee beyond normal cost-sharing requirements under the plan.

(3) This subchapter does not diminish or affect any rights or responsibilities provided under RCW 48.43.065.

AMENDATORY SECTION (Amending WSR 19-24-039, filed 11/26/19, effective 12/27/19)

WAC 284-43-7250 Filing requirements. (1) For health plans and student health plans subject to RCW 48.43.072 and 48.43.073, the carrier must ensure that the health plan and student health plan forms clearly inform covered persons of their rights to access contraceptive services and supplies, voluntary sterilization and abortion. The health plan and student health plan forms must clearly inform covered persons how they access these services and supplies.

~~(2) ((For student health plans subject to RCW 48.43.072, the carrier must ensure that the plan forms clearly inform covered persons of their rights to access contraceptive services and supplies, and voluntary sterilization. The plan forms must clearly inform covered persons how they access these services and supplies.~~

~~(3))~~ A health plan's forms and student health plan's forms must include a detailed description of the plan's benefits provided to covered persons that specifically instructs covered persons where and how they access coverage of contraceptive supplies, including over-the-counter supplies. This information must include:

(a) Whether covered supplies are available from in-network and out-of-network providers; and

(b) How to submit a claim including, at a minimum:

(i) Whether covered persons may purchase covered supplies and seek reimbursement from the carrier;

(ii) How to access and submit any necessary claim forms; and

(iii) Where to send a claim, such as a mailing address or instructions for submitting a claim electronically.

~~((4))~~ (3) If a health plan or student health plan limits the number of covered over-the-counter contraceptive supplies, the health plan or student health plan must include with its filing supporting evidence showing that the limitation does not impose any restriction or delay on the coverage of contraceptive supplies in violation of RCW 48.43.072 or any other state or federal law.

~~((5))~~ (4) If a health plan or student health plan limits the number of covered contraceptive services or supplies, the plan forms must include a detailed description of the plan's benefits that specifically instructs covered persons how to request coverage of additional contraceptive services or supplies. The process may not impose any restrictions or delays on the coverage or access of contraceptive

services or supplies in violation of RCW 48.43.072, or any other state or federal law.