



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 19, 2021
TIME: 5:43 PM

WSR 21-21-100

Agency: Office of the Insurance Commissioner

Original Notice

Supplemental Notice to WSR 21-19-139

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-14-076_ ; 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) FAIR (fair access to insurance requirements) plan committee members

Insurance Commissioner Matter R 2021-15

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 2, 2021	2:30 pm	Zoom meeting: Detailed information for attending the Zoom meeting posted on the OIC Website here: 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 _ (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: 360-586-3109
Other:
By (date) 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
Other:
By (date) 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, RCW 48.01.030, RCW 48.18.480

Statute being implemented:

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
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
Enforcement:	Charles Malone	P.O. Box 40255, Olympia, WA 98504-0255	(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: The Office of the Insurance commissioner has determined that under this rule is exempt from a Cost Benefit Analysis under RCW 34.05.328(b)(iv):

- RCW 34.05.328(5)(b)(iv), this rulemaking 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 rulemaking 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.

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:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- 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 _____.

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

This rulemaking 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.

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:

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>

Email:
Other:

Date: October 19, 2021

Name: Mike Kreidler

Title: Insurance Commissioner

Signature:

A handwritten signature in black ink that reads "Mike Kreidler". The signature is written in a cursive, slightly slanted style.

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;

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

~~(e))~~ 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.

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.