



Mike Kreidler- Insurance commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R 2021-18**

**CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS
SUMMARY; RULE DEVELOPMENT PROCESS; AND
IMPLEMENTATION PLAN**

Relating to the adoption of

WSHIP purpose, membership and annual reporting

November 8, 2021

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Section 1: Introduction

Revised Code of Washington (RCW) 34.05.325 (6) requires the Office of Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption. The CES shall:

1. Identify the Commissioner's reasons for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences;
3. Summarize and respond to all comments received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the Commissioner's reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

The existing Washington State Health Insurance Pool (WSHIP) rules do not describe the purpose, membership or annual reporting requirements of the WSHIP. Consequently, some carriers are not in compliance with the reporting requirements. Adding this information to the rules will help provide guidance regarding which carriers fall under the reporting requirements.

Section 3: Rule Development Process

The OIC filed a preproposal statement of inquiry (CR-101) to begin formal rulemaking on July 20, 2021. The CR-101 comment period was open until August 30, 2021.

The OIC released the stakeholder draft on July 29, 2021, and held a stakeholder meeting on August 16, 2021.

On September 21, 2021, the OIC filed a CR-102, and the public hearing was scheduled for October 26, 2021.

The OIC held the public hearing on October 26, 2021. Comments on the CR-102 were also due on October 26, 2021.

Section 4: Differences Between Proposed and Final Rule

There are no differences between the proposed and adopted versions.

Section 5: Responsiveness Summary

The OIC received comments and suggestions regarding this rule. The following information contains a summary of the comments, the OIC’s response to the comments, and information about whether the OIC incorporated changes based on the comments.

The OIC received comments from:

- Kaiser Foundation Health Plan of the Northwest
- WSHIP

Stakeholder Comments to the CR-101, stakeholder drafts and CR-102

<i>Comment</i>	<i>OIC Response</i>
WAC 284-91-200 (8)(a) [now WAC 284-91-110 (8)(b)]: FEHB and TRI-CARE do not currently report for the WSHIP. So, they would need to be excluded if the OIC is not intending to change which carriers currently are subject to this reporting.	There are federal statutes currently in effect that address the exclusion of these programs. And RCW 48.41.900 addresses federal supremacy. Therefore, the Commissioner feels it is unnecessary to specify the exclusion of FEHB and TRICARE in these rules.
WAC 284-91-400 2(a)(i) [now WAC 284-91-130(2)(a)]: Use of the word “potentially” adds uncertainty as to which carriers this applies. If that word remains, how is the OIC determining which carriers do need to file?	The Commissioner adjusted the language to remove that word.
Regarding proposed section 284-91-500 [now WAC 284-91-140], WSHIP’s bylaws were amended and restated in 2020. Specifically, the bylaws were amended/restated by resolution of the WSHIP Board on January 8, 2020 and approved by the Insurance Commissioner on January 27, 2020.	The Commissioner has added wording regarding the amended bylaws.

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

The OIC intends to implement the rule through the Company Supervision Administration Unit, which is part of the Company Supervision Division, and enforce the rule through the Legal Affairs Division. OIC’s Company Supervision administrative staff will continue to work with the plan administrator for the WSHIP, carriers, and interested parties with the requirements of the rule.

B. How the Agency intends to inform and educate affected persons about the rule.

After the agency files the permanent rule and adopts it with the Office of the Code Reviser:

- Policy and Legislative Affairs Division staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC’s standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the OIC’s website.
- OIC staff will address questions as follows:

Type of Inquiry	Division
Consumer assistance	None
Rule content	Company Supervision
Authority for rules	Policy and Legislative Affairs
Enforcement of rule	Legal Affairs
Market Compliance	Company Supervision

C. How the Agency intends to promote and assist voluntary compliance for this rule.

- Policy and Legislative Affairs Division staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC’s standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the OIC’s website.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

The OIC’s Company Supervision administrative staff will solicit and monitor WSHIP report submissions to ensure all carriers have met the reporting requirements as applicable. The OIC will send the report results to the plan administrator of the WSHIP. The plan administrator will then determine the financial participation of each pool member based on the report information provided annually.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum

**To: Mike Kreidler
Insurance Commissioner**

**From: Shari Maier
Presiding Official, Hearing on Rule-making**

Matter No. R 2021-18

Topic of Rule-making: WSHIP purpose, membership and annual reporting

This memorandum summarizes the hearing on the above-named rule making, held on October 26, 2021, at 3:00 p.m. in Olympia, Washington via a virtual meeting over which I presided in your stead.

The hearing began at 3:04 p.m.

The following agency personnel were present:
Ron Pastuch, Deanna Ogo, and Jesse Wolff

In attendance:

Skyler Mahjoubian
Sydney Zvara
Anne Redman
Katy Bardsley
Chris Morgan
Frankie Kaiser
Colton Halbach
Kyle Hall
Denyse Bayer
Anita Wuellner

Contents of the presentations made at hearing: No testimony was presented.

The hearing was adjourned.

SIGNED this 2nd day of November.

*s/
Shari Maier, Presiding Official*