

Rating requirements – SSB 6536 (Rule 2016-06)

Concise Explanatory Statement;
Responsiveness Summary, Rule Development
Process and Implementation Plan

November 4, 2016

Mike Kreidler, *Insurance Commissioner*
www.insurance.wa.gov

Table of Contents

Introduction	pg. 3
Reasons for adopting the rule	pg. 4
Rule development process	pg. 5
Differences between proposed and final rule	pg. 6
Responsiveness summary	pg. 7
Implementation plan	pg. 12
Appendix A – Hearing summary	pg. 14

Introduction

The 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 must:

1. Identify the OIC’s reasons for adopting the rule;
2. Describe the differences between the proposed rule and the final rule (other than editing changes) and the reasons for the difference;
3. Summarize and respond to all of the comments that the OIC received regarding the proposed rule during the official public comment period, indicating whether or not each comment resulted in a change to the final rule. If the OIC did not incorporate the change that the commenter requested, the response will include an explanation of why the agency did not incorporate the change; 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.

Reasons for adopting the rule

The Legislature passed SHB 6536 during the 2016 session. The bill requires the OIC to standardize the rating requirements for large-group disability plans, stand-alone dental plans and stand-alone vision plans, making the rating requirements for these plans the same as the rating requirements for Health Care Service Contractors (HCSCs) and Health Maintenance Organizations (HMOs). The OIC needed to do rule-writing to implement the requirements of this bill.

Rule development process

On April 29, 2016, the OIC filed a CR-101 proposing a rule to implement the requirements of SSB 6536, which the Legislature passed during the 2016 legislative session.

The CR-101 comment period was officially open through June 17, 2016, although the OIC voluntarily accepted CR-101 comments through June 24, a week beyond the official deadline. During the CR-101 comment period, five stakeholders submitted comments to the OIC regarding the rule.

On July 27, 2016, the OIC filed a CR-102. The agency held a hearing on September 15, 2016. Although no stakeholders attended the hearing, one stakeholder did submit comments on the CR-102.

The OIC filed a CR-103P to adopt the rule on November 4, 2016 and the rule went into effect 31 days later.

Differences between proposed and final rule

No differences.

Responsiveness summary of comments

The OIC received several comments and suggestions regarding this rule. The following information contains a description of the comments, the OIC's assessment of the comments, and information about whether the OIC included or rejected the comments.

The OIC received comments from:

- Berendt and Associates, LLC
- Cambia Health Solutions
- Cigna
- Premera Blue Cross, LifeWise Health Plan of Washington, and LifeWise Assurance Company

Comments regarding the CR-101

Comment: One commenter asked the OIC whether, for Essential Health Benefit-compliant (EHB) plans in the small group and individual markets, disability carriers need to follow the same rate filing submission requirements as healthcare services contractors (HCSCs) and health maintenance organizations (HMOs). As this commenter observed, although these requirements include submitting the rate filing summary under WAC 284-43-6160, they do not include requiring non-EHB-compliant filings to follow the same timeline as the individual and small group EHB-compliant filings.

Response: This commenter submitted this comment before the stakeholder draft became available, but the stakeholder draft addressed these issues. As soon as the stakeholder draft became available, the OIC responded by sending a copy of the stakeholder draft to the commenter.

Comment: One commenter sought clarification regarding which types of health plans the amended WAC 284-60 covers.

Response: The amended WAC 284-60 applies to grandfathered individual health benefit plans and grandfathered small group plans.

Comment: One commenter asked whether the OIC intended to go beyond the requirements of SSB 6536 in regard to the stakeholder draft, pointing out that grandfathered individual and grandfathered small group plans were outside of the scope of the legislation and of the OIC's CR-101 for this rule.

Response: The OIC did not intend to go beyond the scope of the bill or the CR-101. Furthermore, the OIC believes that the proposed rule does not go beyond the scope of these requirements.

Because the bill and the CR-101 do not address grandfathered individual and grandfathered small group plans, the OIC cannot delete the requirements for disability carriers in WAC 284-60 regarding rating grandfathered individual and grandfathered small group plans.

Similarly, grandfathered individual and grandfathered small group plans for HCSCs and HMOs were outside the scope of the bill and the CR-101, so the OIC cannot remove WAC 284-43 subchapter I, because this subchapter covers rating requirements for HCSCs and HMOs regarding grandfathered individual and grandfathered small group plans.

Comment: One commenter asked the OIC to confirm whether the proposed changes under WAC 284-43 would require stand-alone dental and stand-alone vision plans for individual and small groups to comply with the filing timeline requirements from WAC 284-43-0200.

Response: In regard to stand-alone dental plans and stand-alone vision plans, the filing timeline requirements of WAC 284-43-0200 only apply to stand-alone dental plans that provide pediatric dental benefits as one of the Essential Health Benefits.

Comment: Two commenters provided suggested revisions to WAC 284-60-010 to make the section easier to understand.

Response: The OIC agrees that WAC 284-60-010 could benefit from some overall revisions aimed at increasing readability. However, the scope of the agency's CR-101 for this rule limits the agency to addressing only those issues that are necessary to implement SSB 6536. Because the suggested edits are beyond the scope of SSB 6536, the OIC would be exceeding its authority under the CR-101 if it made these changes as part of this rule process.

In addition, it's important to note that one of the proposed changes that the commenters mentioned would violate RCW 48.70.030, because the loss ratio for specified disease plans are governed by RCW 48.70.030 and are more restrictive than the general loss ratio requirements in WAC 284-60.

Comment: One commenter asked the OIC to add language to WAC 284-43-6000 to make it clear that the section applies to disability carriers.

Response: In response to this request, the OIC revised the language, adding a reference to disability carriers.

Comment: One commenter asked the OIC to add language to WAC 284-43-6010 and 284-43-6500 to make it clear that these sections both apply to disability carriers.

Response: Because these sections already address the issue that this commenter mentioned, the OIC declined to make changes in response to this request. WAC 284-43-6010 says that WAC 284-43 Subchapter I will apply to grandfathered individual and small group health plans offered by HCSCs and HMOs, plus individual and small group stand-alone dental plans and stand-alone vision plans offered by HCSCs, HMOs, and disability carriers. In addition, WAC 284-43-6500 says that WAC 284-43 Subchapter J will apply to all health plans, all stand-alone dental plans, and all stand-alone vision plans offered by the HCSCs, HMOs, and disability carriers.

Comment: One commenter asked the OIC to use the definition of carrier from 284-43-6520(5) in 284-43-6020.

Response: The OIC carefully considered this suggestion, and although the agency appreciates this comment, it has declined to make this change. Using the definition of carrier from 284-43-6520(5) in 284-43-6020 would be inconsistent with the scope of Subchapter I, which applies to grandfathered individual and small group health plans offered by HCSCs and HMOs as well as individual and small group stand-alone dental plans and stand-alone vision plans offered by HCSCs, HMOs, and disability carriers.

Comment: One commenter asked the OIC to remove the phrase “but not necessarily limited to” from WAC 284-43-6020(42).

Response: This definition comes from WAC 284-43 Subchapter J, and the agency used this language to maintain consistency between the two subchapters. For this reason, the OIC declined to make this change in response to this suggestion.

Comment: One commenter said that Legislature intended for the OIC to address the rate and form filing process and regulatory review standards in the rule.

Response: The OIC reviewed the bill very carefully in response to this comment, but did not identify language in the bill that supported this assertion.

Even if the bill expressed this intention, the OIC has not identified remaining issues that the OIC could standardize. Specifically, the rate and form filing process and the regulatory review standards are already standardized for the applicable carriers, except in areas where the RCWs contain different requirements for one type of carrier compared to another.

Although the OIC has reviewed this issue carefully and has not identified remaining areas that the agency could standardize, the agency wishes to express its openness to stakeholder input. If stakeholders identify specific sections of WAC 284 where the rate and form filing process and the regulatory review standards for the three types of carriers are not standardized and where the RCWs do not require differential treatment, the OIC encourages stakeholders to bring these issues to the agency’s attention.

Comment: One commenter asked the OIC to refer to the Short Form filing process in the rule. Specifically, the commenter asked the agency add the requirements for Short Form rate and

form filings and Short Form standards, including a definition of “deviation.”

Response: Making these changes would be outside of the scope of the bill and the OIC’s CR-101 for this rule, so the OIC did not make them.

Comment regarding the CR-102

Comment: One commenter said: “[w]e do agree that there are other related rule sections that would benefit from clarifications, and would urge your office to address those at a future date. But we are mindful at this time that the rules are needed sooner rather than later for guidance in applying the recent legislation. [...] At this time, then, we believe the key issues have been addressed and we have no suggested changes.”

Response: The OIC appreciates this comment.

Implementation plan

Implementation and enforcement of the rule

The OIC intends to implement and enforce the rule through the Rates and Forms Division and Market Conduct Oversight Unit, which is part of the Company Supervision Division. Using existing resources, OIC staff will continue to work with carriers, providers, and interested parties in complying with the requirements of these rules.

How the agency will 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 staff will distribute copies of the final rule and the Concise Explanatory Statement (CES) to all interested parties through US mail, post to the OIC's standard rule making listserv and email to stakeholder participants.
- 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	Consumer Protection Division
Rule content	Rates and Forms
Authority for rules	Policy and Legislative Affairs
Enforcement of rule	Legal Division
Market Compliance	Company Supervision

How the agency intends to promote and assist voluntary compliance for this rule

The steps listed under implementation will inform and educate affected persons on the changes and help promote voluntary compliance.

How the agency intends to evaluate whether the rule achieves the purpose for which it was adopted

The OIC will work closely with carriers, providers, and other interested parties to evaluate the effectiveness of the rule as well as to monitor consumer complaints and to monitor plans for non-compliance.

Appendix A – Hearing Summary

Summarizing Memorandum

To: Mike Kreidler, Insurance Commissioner
From: Bianca Stoner, presiding official for rule hearing
Matter: Rule 2016-06
Topic: Rating requirements – SSB 6536

This memorandum summarizes the hearing on the above-named rulemaking, which was held on September 15, 2016 at 10:00 a.m. in Olympia. I presided over this hearing in your place.

The following agency personnel were present:

- Molly Nollette
- Lichiou Lee
- Mandy Weeks-Green

No stakeholders attended and there was no testimony.

SIGNED this 15th day of September, 2016

Bianca Stoner, Presiding Official