



PROPOSED RULE MAKING

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

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 07, 2018

TIME: 10:38 AM

WSR 18-04-111

Agency: Office of the Insurance Commissioner

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR** 17-17-179 ; 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) Adjusting geographic rating area to increase market stability.

Insurance Commissioner Matter No. R 2017-11

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
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March 13, 2018	12:00PM	Office of the Insurance Commissioner 5000 Capitol Blvd. Tumwater, WA 98504	
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Date of intended adoption: March 14, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Jane Beyer

Address: PO Box 40258, Olympia, WA 98504-0258

Email: rulescoordinator@oic.wa.gov

Fax: (360) 586-3109

Other:

By (date) March 12, 2108

Assistance for persons with disabilities:

Contact Lorie Villaflores

Phone: (360) 725-7087

Fax:

TTY: (360) 586-0241

Email: LorieV@oic.wa.gov

Other:

By (date) March 12, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rule will consider amending the existing rules establishing geographic rating areas for individual and small group health plans.

Reasons supporting proposal: The Commissioner has received more recent risk pool information, making adjustments to the current rating area designations and ratio restrictions necessary to more accurately reflect the risk pool.			
Statutory authority for adoption: RCW 48.02.060, RCW 48.43.733, and 45 C.F.R. 147.102			
Statute being implemented: RCW 48.43.733			
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: None			
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:	Jane Beyer	PO Box 40258, Olympia, WA 98504-0258	(360) 725-7043
Implementation:	Molly Nollette	PO Box 40255, Olympia, WA 98504-0255	(360) 725-7117
Enforcement:	Toni Hood	PO Box 40255, Olympia, WA 98504-0255	(360) 725-7050
Is a school district fiscal impact statement required under RCW 28A.305.135?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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?			
<input checked="" type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name: Micah Sanders Address: PO Box 40258, Olympia, WA 98504-0258 Phone: 360-725-7040 Fax: (360) 586-3109 TTY: Email: micahs@oic.wa.gov Other:			
<input type="checkbox"/> No: Please explain:			

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 19.85.025 (4).

Explanation of exemptions, if necessary: No impacted parties (carriers) are small businesses as defined in 19.85.020 (3)..

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: 2/7/2018

Name: Mike Kreidler

Title: Insurance Commissioner

Signature:



AMENDATORY SECTION (Amending WSR 16-23-019, filed 11/4/16, effective 12/5/16)

WAC 284-43-6680 Geographic rating area factor development. (1) For nongrandfathered individual or small group health plans offered, issued or renewed on or after January 1, 2014, and on or before December 31, 2018, if an issuer elects to adjust its premium rates based on geographic area, the issuer must use the geographic rating areas designated in WAC 284-43-6700.

(2) The premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic rating area, must not be more than 1.15.

(a) King County is the index geographic rating area for purposes of calculating the premium ratio. The geographic rating area factor for the index area must be set at 1.00.

(b) A health-status related factor may not be used to establish a rating factor for a geographic rating area. Health factor means any of the following:

- (i) Health status of enrollees or the population in an area;
- (ii) Medical condition of enrollees or the population in an area, including both physical and mental illnesses;
- (iii) Claims experience;
- (iv) Health services utilization in the area;
- (v) Medical history of enrollees or the population in an area;
- (vi) Genetic information of enrollees or the population in an area;
- (vii) Disability status of enrollees or the population in an area;
- (viii) Other evidence of insurability applicable ~~((to))~~ in the area.

(3) Assignment of a factor to a geographic rating area must be actuarially sound and based on provider reimbursement differences. An issuer must fully document the basis for the assigned rating factors in the actuarial memo submitted with a rate filing.

(4) The geographic rating area factors must be applied uniformly to individuals or small groups applying for or receiving coverage from the issuer.

(5) For out-of-state enrollees covered under a health benefit plan issued to a Washington resident, an issuer must apply the geographic rating area factor based on the primary subscriber's Washington residence. For out-of-state enrollees who are covered under a health benefit plan issued through an employer whose primary place of business is Washington, an issuer must apply the geographic rating area factor based on the employer's primary place of business.

(6) This section does not apply to stand alone dental plans offered on the Washington health benefit exchange.

NEW SECTION

WAC 284-43-6681 Geographic rating area factor development on or after January 1, 2019. (1) For nongrandfathered individual or small group health plans offered, issued or renewed on or after January 1, 2019, if an issuer elects to adjust its premium rates based on geo-

graphic area, the issuer must use the geographic rating areas designated in WAC 284-43-6701.

(2)(a) Except as provided in (b) and (c) of this subsection the premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic rating area, must not be more than 1.15.

(b) An issuer that offers qualified health plans as described in RCW 43.71.065 in every county in six or more rating areas designated in WAC 284-43-6701 may utilize a premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic area of up to 1.22, if the development of rating factors is actuarially justified and meets all applicable requirements.

(c) An issuer that offers qualified health plans as described in RCW 43.71.065 in every county in every rating area designated in WAC 284-43-6701 may utilize a premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic area of up to 1.40, if the development of rating factors is actuarially justified and meets all applicable requirements.

(d)(i) The area factor for the index geographic rating area must be set at 1.00. Except to the extent provided otherwise in (d) of this subsection, King County is the index geographic rating area for purposes of calculating the premium ratio.

(ii) If King County (area 1) is not in an issuer's service area, the geographic rating area of the county with the largest enrollment in the issuer's service area must be set at 1.00.

(iii) If the issuer offers both individual and small group health plans and either the individual or small group health plans are not offered in King County (area 1), the index geographic rating area may be different for individual and small group health plans. The index geographic rating area for each market must be established consistent with (d)(i) or (ii) of this subsection as applicable.

(iv) If the issuer is new to the Washington state market, the geographic rating area within the issuer's service area that has the greatest number of counties must be set at 1.00.

(3) A health-status related factor may not be used to establish a rating factor for a geographic rating area. Health factor means any of the following:

(a) Health status of enrollees or the population in an area;

(b) Medical condition of enrollees or the population in an area, including physical, mental, or behavioral health illnesses;

(c) Claims experience;

(d) Health services utilization in the area;

(e) Medical history of enrollees or the population in an area;

(f) Genetic information of enrollees or the population in an area;

(g) Disability status of enrollees or the population in an area; or

(h) Other evidence of insurability to the area.

(4) Assignment of a factor to a geographic rating area must be actuarially sound and based on provider costs and practice pattern differences. An issuer must fully document the basis for the assigned rating factors in the actuarial memorandum submitted with a rate filing.

(5) The geographic rating area factors used in health plans filed with the commissioner must be applied uniformly to those individuals or small groups applying for or receiving coverage from the issuer.

(6) For out-of-state enrollees under a health benefit plan issued to a Washington resident, an issuer must apply the geographic rating area factor based on the primary subscriber's Washington residence. For out-of-state enrollees who are covered under a health benefit plan issued through an employer whose primary place of business is Washington, an issuer must apply the geographic rating area factor based on the employer's primary place of business.

AMENDATORY SECTION (Amending WSR 16-23-019, filed 11/4/16, effective 12/5/16)

WAC 284-43-6700 Geographic rating area designation. (1) The following geographic rating areas are designated for Washington state for nongrandfathered individual and small group plans offered, issued, or renewed on or after January 1, 2014, and on or before December 31, 2018:

Area 1: Index geographic rating area: King County.

Area 2: Clallam, Cowlitz, Grays Harbor, Island, Jefferson, Mason, Lewis, Kitsap, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties.

Area 3: Clark, Klickitat, and Skamania counties.

Area 4: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties.

Area 5: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Okanogan, Walla Walla, Whitman, and Yakima counties.

(2) The commissioner will review the geographic rating area designation in this section not more frequently than every three years, beginning January 31, 2016. The commissioner will publish changes in the geographic rating area designation within sixty days of the review date.

NEW SECTION

WAC 284-43-6701 Geographic rating area designation on or after January 1, 2019. (1) The following geographic rating areas are designated for Washington state for nongrandfathered individual and small group plans issued or renewed on or after January 1, 2019:

Area 1: King County.

Area 2/West: Clallam, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Pacific, and Wahkiakum counties.

Area 3/South: Clark, Klickitat, and Skamania counties.

Area 4/Northeast: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties.

Area 5/South Sound: Mason, Pierce, and Thurston counties.

Area 6/South Central: Benton, Franklin, Kittitas, and Yakima counties.

Area 7/North Central: Adams, Chelan, Douglas, Grant, and Okanogan counties.

Area 8/Northwest: Island, San Juan, Skagit, Snohomish, and Whatcom counties.

Area 9/Southeast: Asotin, Columbia, Garfield, Walla Walla, and Whitman counties.

(2) The commissioner will review the geographic rating area designation in this section not more frequently than every three years, beginning January 31, 2021.