



# 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: April 18, 2022

TIME: 11:15 AM

WSR 22-09-056

Agency: Office of the Insurance Commissioner

Original Notice

Supplemental Notice to WSR 21-20-107

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 21-14-097 ; 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) Health care sharing ministries rulemaking

Insurance Commissioner Matter R 2021-17

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 26, 2022	2:00 pm	Zoom meeting: Detailed information for attending the Zoom meeting is posted on the OIC website here:  <a href="https://www.insurance.wa.gov/health-care-sharing-ministries-r-2021-17">https://www.insurance.wa.gov/health-care-sharing-ministries-r-2021-17</a>	Due to the COVID-19 public health emergency, this meeting will be held via the Zoom platform.

Date of intended adoption: May 31, 2022 \_ (Note: This is NOT the effective date)

### Submit written comments to:

Name: Jane Beyer

Address: PO Box 40260, Olympia, WA 98504-0260

Email: rulescoordinator@oic.wa.gov

Fax: 360-586-3109

Other:

By (date) May 24, 2022

### Assistance for persons with disabilities:

Contact Katie Bennett

Phone: 360-725-7013

Fax: 360-586-2023

TTY: 360-586-0241

Email: Katie.Bennett@oic.wa.gov

Other:

By (date) May 26, 2022

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Commissioner is adopting rules relating to the exemption of health care sharing ministries (HCSM) from the definition of health carrier or insurer under 48.43.009 to reduce confusion related to entities' status as HCSM's and increase transparency.

**Reasons supporting proposal:** The rulemaking is adopting new WACs to reduce confusion related to entities' status as health care sharing ministries, increase transparency and codify all applicable rules related to health care sharing ministries in one location.

**Statutory authority for adoption:** RCW 48.02.060, 48.17.005, and RCW 48.15.015

**Statute being implemented:** RCW 48.43.009

**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:	Jane Beyer	PO Box 40260, Olympia, WA 98504	360-725-7043
Implementation:	Molly Nollette	PO Box 40260, Olympia, WA 98504	360-725-7000
Enforcement:	Charles Malone	PO Box 40260, Olympia, WA 98504	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: Simon Casson  
Address: PO Box 40260, Olympia, WA 98504  
Phone: 360-725-7038  
Fax: 360-586-3109

TTY:

Email: [Simon.Casson@oic.wa.gov](mailto:Simon.Casson@oic.wa.gov)

Other:

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 \_\_\_\_\_.

Explanation of exemptions, if necessary:

**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.

Health Care Sharing Ministries are defined, in part, as organizations that have existed since December 31, 1999, are described in Section 501(c)(3) of the Internal Revenue Code and are exempt from taxation under Section 501(a) of the Internal Revenue Code. These entities generally need to file form 990 with the Internal Revenue Service (IRS). The form is used by the IRS to gather information about tax-exempt organizations. The OIC used IRS 990 form information to determine number of employees, as well as annual payroll and annual gross business income of these entities.

The number of employees reported in the most recent 990 Forms available for each entity that to the best of the OIC's knowledge claims to be a health care sharing ministry, including some entities that the OIC disputes are legitimate health care sharing ministries, is detailed in the table below.

Table 1

<i>Health Care Sharing Ministry</i>	<i>Number of Employees</i>	<i>990 Form Year</i>
<i>Samaritan Ministries</i>	423	2020
<i>Christian Healthcare Ministries</i>	292	2020
<i>Christian Care Ministries</i>	713	2020

<i>Liberty Healthshare</i> <sup>1</sup>	568	2019
<i>Oneshare Health</i> <sup>2</sup>	236	2019
<i>Zion Health</i> <sup>3</sup>	25	2020

Given the above data for each identifiable health care sharing ministry, the average number of employees per business is 376. This is well above the threshold of a small business, which is defined as 50 or fewer employees. However, because purported health care sharing ministries are not required to report their existence or operation to the OIC under current law, it is possible that there may be other small businesses in this industry that OIC is not aware of. This rule is intended to address this issue, in part, by giving OIC authority to request information from these entities.

Determining which health care sharing ministries operate in Washington was difficult, and not all the identified ministries had readily available 990 forms. Therefore, the OIC was able to determine the annual payroll and annual gross business income for 6 entities that hold themselves out as health care sharing ministries. Even if there are entities in this industry that would be considered small employers, this analysis indicates that this rule would not result in more than minor costs for these employers.

The annual payroll and the annual gross business income for each of the 6 companies is detailed in table 2 below. Per the definitions mentioned in RCW 19.85.020, a “minor cost” means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. Given this definition, three-tenths of one percent of annual gross business income and one percent of annual payroll have been calculated in table 2.

Table 2

<i>Health Care Sharing Ministry</i>	<i>Annual Payroll</i>	<i>Total Revenue</i>	<i>1% of Annual Payroll</i>	<i>0.3% of Annual Revenue</i>	<i>990 Form Year</i>
<i>Samaritan Ministries</i>	\$ 27,561,127.00	\$ 45,878,483.00	\$ 275,611.27	\$ 137,635.45	2020
<i>Christian Healthcare Ministries</i>	\$ 16,549,206.00	\$ 633,361,869.00	\$ 165,492.06	\$ 1,900,085.61	2020
<i>Christian Care Ministries</i>	\$ 54,000,000.00	\$ 784,000,000.00	\$ 540,000.00	\$ 2,352,000.00	2020
<i>Liberty Healthshare</i>	\$ 18,168,498.00	\$ 54,725,576.00	\$ 181,684.98	\$ 164,176.73	2019

<sup>1</sup> OIC is currently investigating Liberty Healthshare to determine whether they meet the requirements of RCW 48.43.009 or 26 USC §5000A(d)(2)(B).

<sup>2</sup> In 2021, OneShare Health, LLC, entered into a voluntary consent order with the OIC in which the OIC asserted it has reason to believe OneShare Health, LLC does not satisfy the requirements to be a valid health care sharing ministry, and in which OneShare Health, LLC agreed to cease soliciting Washington residents and to not renew existing agreements, contracts or memberships with Washington state residents.

<sup>3</sup> OIC is currently investigating Zion Health to determine whether they meet the requirements of RCW 48.43.009 or 26 USC §5000A(d)(2)(B).

<i>Oneshare Health</i>	\$ 11,256,146.00	\$ 59,871,001.00	\$ 112,561.46	\$ 179,613.00	2019
<i>Zion Health</i>	\$ 646,527.00	\$ 9,267,936.00	\$ 6,465.27	\$ 27,803.81	2020

Measuring the cost of responding to an inquiry from the Insurance Commissioner is difficult given the variation in responses. For some entities, the information typically requested by the OIC, such as proof of the date of formation, statements of common beliefs, membership terms and annual audits, may be readily available. For others, this information may not be readily available or well organized. For this reason, the OIC used a minimum minor cost and a maximum minor cost to set a cost threshold for this analysis. The employee hourly rate for each health care sharing ministry was calculated using the number of employees and the payroll information provided in the 990 forms. The cost parameters for the minimum minor cost calculations can be seen below:

Table 3

<i>Parameter for Inquiry Response</i>	<i>Value</i>
<i>Number of employees involved</i>	1
<i>Hours per Employee</i>	8

Similarly, a maximum minor cost was calculated, which included additional employees and hours, as well as legal counsel. For the legal cost estimate, the OIC used an hourly rate of \$350. This estimate is within the range of hourly rates for attorneys in Washington state, which is estimated to be between \$175 and \$378.<sup>4</sup> The cost calculations for the maximum minor cost can be seen below:

Table 4

<i>Parameter for Inquiry Response</i>	<i>Value</i>
<i>Number of employees involved</i>	3
<i>Hours per Employee</i>	8
<i>Attorney Hours</i>	16
<i>Attorney Hourly Rate</i>	\$350.00

Given these parameters, the minor cost assumes one inquiry per health care sharing ministry per year. This estimate is greater than OIC's current practice. In 2021, the OIC issued 8 inquiries to different health care sharing ministries operating in Washington state. Given that more than 8 ministries operate in the state, the assumption that each health care sharing ministry will receive an inquiry and therefore bear the cost is an overestimate. The OIC was unable to determine exactly how many ministries operate in Washington state. However, by examining customer inquiries and the known health care sharing ministries associated with the Alliance of Health Care Sharing Ministries, we estimate that at least 14 ministries sell health sharing arrangements in Washington state. According to the Alliance of Health Care Sharing Ministries' website, there are 108 health care sharing ministries that meet the federal definition, indicating that there are likely more than 14 operating in Washington state. With this information, we assume each health care sharing ministry will receive 0.57 inquiries per year (8 inquiries / 14 known health care sharing ministries).

<sup>4</sup> "How Much Does a Lawyer Charge in Washington? (2021)." Clio, June 3, 2021. <https://www.clio.com/resources/legal-trends/compare-lawyer-rates/wa/#:~:text=The%20typical%20lawyer%20in%20Washington,hire%20an%20attorney%20in%20Washington.>

Both the maximum and minimum minor cost for each health care sharing ministry are shown, along with the 1% of annual payroll and 0.3% of annual revenue. The lesser of either 1% of annual payroll or 0.3% of annual revenue is bolded.

Table 5

<i>Health Care Sharing Ministry</i>	<i>1% of Annual Payroll</i>	<i>0.3% of Annual Revenue</i>	<i>Min Cost</i>	<i>Max Cost</i>
<i>Samaritan Ministries</i>	\$ 275,611.27	<b>\$ 137,635.45</b>	\$ 74.46	\$ 6,046.79
<i>Christian Healthcare Ministries</i>	<b>\$ 165,492.06</b>	\$ 1,900,085.61	\$ 64.77	\$ 5,988.63
<i>Christian Care Ministries</i>	<b>\$ 540,000.00</b>	\$ 2,352,000.00	\$ 86.56	\$ 6,119.33
<i>Liberty Healthshare</i>	\$ 181,684.98	<b>\$ 164,176.73</b>	\$ 36.56	\$ 5,819.34
<i>Oneshare Health</i>	<b>\$ 112,561.46</b>	\$ 179,613.00	\$ 54.51	\$ 5,927.06
<i>Zion Health</i>	<b>\$ 6,465.27</b>	\$ 27,803.81	\$ 29.56	\$ 5,777.33

For all the entities whose data the OIC had access to, the maximum minor cost estimate for each identified health care sharing ministry is well below the lesser of the either 1% of annual payroll or 0.3% of annual revenue.

Based upon the foregoing information, OIC determines that this rule is exempt from Small Business Economic Impact Statement requirements, as the businesses that must comply with the proposed rule are not small businesses. The OIC has found that Health Care Sharing Ministries may not be considered small businesses under RCW 19.85.020(2).

Additionally, it is concluded that the proposed rule does not impose more than minor costs on businesses as defined by RCW 19.85.020(2) based on OIC's analysis of 990 forms filed by known entities holding themselves out as health care sharing ministries.

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: Simon Casson  
 Address: PO Box 40260, Olympia, WA 98504  
 Phone: 360-725-7038  
 Fax:  
 TTY:  
 Email: Simon.Casson@oic.wa.gov  
 Other:

<b>Date:</b> April 18, 2022	<b>Signature:</b> 
<b>Name:</b> Mike Kreidler	
<b>Title:</b> Insurance Commissioner	

**SUBCHAPTER N**  
**HEALTH CARE SHARING MINISTRIES**

NEW SECTION

**WAC 284-43-8210 Definitions.** For the purposes of this subchapter:

(1) "Annual audit" means an audit occurring once a year at approximately the same time each year for the preceding calendar year.

(2) "Certified public accounting firm" means a firm licensed by state boards of accountancy, the District of Columbia, and U.S. territories.

(3) "Continuously" means without a break or interruption.

(4) "Generally accepted accounting principles" means the compulsory accrual method of accounting for a public company.

(5) "Health care sharing ministry" means an organization:

(a) That is described in Section 501(c)(3) of the Internal Revenue Code and is exempt from taxation under Section 501(a) of the Internal Revenue Code;

(b) That has members who share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the state in which a member resides or is employed;

(c) Whose members retain membership in the health care sharing ministry even after the member develops a medical condition;

(d) Which, or a predecessor of which, has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and

(e) That conducts an annual audit, which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

(6) "Independent certified public accounting firm" means a certified public accounting firm that meets the standards of independence set forth by the American Institute of Certified Public Accountants (AICPA), the Public Company Accounting Oversight Board (PCAOB), or another similar body that oversees or sets standards for the accounting or auditing professions.

(7) "Organization" means an entity organized as a corporation, a limited liability company (LLC), an unincorporated association, or a trust. Entities must be organized under United States federal or state law.

(8) "Predecessor" means an organization that was acquired, merged with, or otherwise replaced by a successor organization, and the predecessor organization no longer shares medical expenses.

(9) "Share medical expenses" means providing for the medical needs and financial needs related to medical expenses of a participant through member contributions.

NEW SECTION

**WAC 284-43-8220 Prompt reply to the commissioner required.** Any entity claiming to be a health care sharing ministry shall timely reply in writing to an inquiry of the commissioner regarding their compliance with RCW 48.43.009, and any potential violations of RCW 48.05.030(1) and 48.15.020(1) and related regulations, including this regulation. A timely response is one that is received by the commissioner within 15 business days from receipt of the inquiry.

NEW SECTION

**WAC 284-43-8230 Continuously sharing medical expenses.** A health care sharing ministry must share medical expenses among its members, and this sharing must be continuous and without interruption. In order for sharing between a predecessor organization and its successor organization to be continuous and without interruption, remaining predecessor organization members must share medical expenses with successor organization members, if any, at the time the successor organization acquires, merges with, or otherwise replaces the predecessor's medical expense sharing activities.