



Special Enrollment Rule: Expanded Health Benefit Exchange Request (Rule 2016-21)

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

December 20, 2016

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

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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 the 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;
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

Representatives from the Washington State Health Benefit Exchange (Exchange) and issuers asked the OIC to write a rule to change the earliest possible application deadline for consumers who apply through special enrollment for health plans on or off of the Health Benefit Exchange.

Rule development process

On July 29, 2016, the OIC filed a preproposal statement of inquiry (CR-101) for a rule to change the application deadline for consumers who apply through special enrollment for health plans on or off of the Health Benefit Exchange. The CR-101 comment period was open through September 16, 2016.

Two stakeholders submitted comments to the OIC on Rule 2016-21 during the CR-101 comment period.

On September 27, 2016, the OIC held a stakeholder meeting.

On November 2, the OIC filed a CR-102. The agency held a hearing on December 8, 2016.

The OIC filed the CR-103P to adopt the rule on December 20, 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 Rule 2016-21. 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 on Rule 2016-21 from:

- 4YourBenefits
- Kaiser Foundation Health Plan of the Northwest
- Northwest Health Law Advocates (NOHLA)
- Premera Blue Cross, LifeWise Health Plan of Washington, and LifeWise Assurance Company

Comments

Comment: One stakeholder confirmed that the proposed rule was consistent with what issuers had requested, reiterating her understanding of what the rule would do.

Response: The OIC appreciates these comments.

Comment: One stakeholder observed that allowing the Exchange and issuers to use a special enrollment apply-by deadline as early as the 15th of the month could cause problems for consumers who were previously uninsured and enroll between the 15th and the 20th. The stakeholder pointed out that even if there are delays in processing consumers' applications, issuers are usually able to enroll consumers between the first and fifth of the following month, putting the insurance into effect retroactively to the first day of the month. This commenter said that there was no explanation of whether the OIC considered consumer interests when making the decision to proceed with this rule. The commenter asked the OIC to withdraw the rule, moving forward later only after the OIC fully evaluates this issue.

Response: The rule team members had shared these concerns regarding the potential impact on consumers, and the team raised those concerns within the agency. In the end, though, the agency decided to proceed.

Comment: The OIC issued two stakeholder drafts for this rule. Commenting on the first stakeholder draft, one stakeholder asked for confirmation that the OIC was not changing the requirement of next-month coverage regardless of enrollment date for consumers who were

using a special enrollment right to move from minimum essential coverage to an individual health plan.

Response: In response to this comment, the OIC re-read the stakeholder draft and recognized that the draft language could be confusing. To resolve the situation, the agency issued a second stakeholder draft that made only one change: replacing the word "twentieth" with "fifteenth."

Comment: One commenter asked the OIC to provide additional background information regarding the proposal to change the existing rule.

Response: The Exchange requested this change, so the OIC responded by filing a CR-101 for Rule 2016-13. After hearing about the Exchange's request, some issuers decided that they wanted to have the ability to move their deadline to match the Exchange's new deadline. They asked the OIC to issue a new CR-101 that would permit them to do that. The OIC analyzed the issue, discussed it internally and then issued the new CR-101 for Rule 2016-21, withdrawing the CR-101 for Rule 2016-13.

Comment: One stakeholder asked the OIC to add language to the rule to clarify that when a consumer moves to an individual health plan from another plan that qualifies as minimum essential coverage, the consumer qualifies for coverage to go into effect the first day of the next month regardless of the date the consumer enrolled during the previous month.

Response: This stakeholder sent this comment in response to the first stakeholder draft, which contained some language that could be confusing. As a result, it's possible that this comment is in regard to the draft's lack of clarity.

To create more clarity, the OIC issued a second stakeholder draft. In that draft, the only change is the replacement of the word "twentieth" with the word "fifteenth."

Alternately, it's possible that the stakeholder is asking the OIC to revise the overall structure and wording of WAC 284-43-1140.

In Rule 2015-16, the OIC is addressing overall structure, wording and necessary updates to comply with federal changes in regard to all of the special enrollment rules, not just WAC 284-43-1140. After the 2017 legislative session ends, the OIC will assess the status of federal developments regarding health reform and, if applicable depending on what's happening with health reform, will start working on that rule again.

Comment: One stakeholder said that if the intent of the rule is to make it more difficult for someone who qualifies for special enrollment to move from one minimum essential coverage plan to another, the stakeholder would be concerned and would request the opportunity to understand the rationale and comment further.

Response: The OIC confirms that the intent of the rule is not to make this process more difficult. The Exchange originally initiated this rule change with the intent of providing consumers with more certainty regarding when health plans will go into effect. The Exchange felt that setting the apply-by cutoff date for special enrollment several days earlier would make it more likely that the insurance will be in effect by the first day of the next month for consumers who submit applications before the apply-by deadline.

Comment: After viewing the second stakeholder draft, one commenter expressed support for the changes.

Response: The OIC appreciates this input.

Comment: One commenter expressed opposition to the proposed rule, saying:

- The individual mandate requires consumers to have coverage by December 31st, using the 23rd as the application deadline contradicts that by a week, and moving the date back to the 15th further exacerbates this problem for consumers because it only gives them six weeks to enroll or renew on time for 2017 coverage.
 - **Response:** This consumer is referring to open enrollment, not special enrollment. The rule only affects special enrollment.

However, the open enrollment deadline will probably change, although the change will occur outside of this rule process.

The Exchange and issuers already have the right under federal law to move the open enrollment deadline to the 15th, and the Exchange has indicated that it intends to make this change for the 2018 plan year. Federal law also already allows issuers to make this change too.
- The rule change puts more pressure on Exchange staff and internet services.
 - **Response:** The OIC appreciates this comment. However, the Exchange originally initiated this rule change, and their intent was to provide consumers with more certainty regarding when health plans will go into effect. The Exchange felt that setting the apply-by cutoff date for special enrollment several days earlier would make it more likely that the insurance will be in effect by the first day of the next month for consumers who submit applications before the apply-by deadline. In addition, the rule change will actually give the Exchange more time – not less – to process enrollment applications.

- People need to have as much time as possible to get through the phones or internet and make informed decisions. Individuals and their families need to be the priority, not the insurance carriers and paper processing. Individuals need to know they are covered and don't necessarily need to have a card in their hand on the first of the month of coverage.
 - **Response:** Although the OIC did not make changes to the rule in response to these comments, the agency appreciates these comments and agrees that the needs of consumers is of paramount importance.

Comment: One commenter asked the OIC to change the open enrollment deadline to begin in October.

Response: Under the CR-101 for this rule, the scope of this rule is to change the earliest possible apply-by deadline for special enrollment. Addressing open enrollment would be outside of the scope of the rule.

Even if the scope of the rule was broader, though, the OIC still could not make this change because the federal government sets the start date for open enrollment, not the states.

Comment: One commenter expressed support for the rule, saying that the change will simplify the messages consumers receive about how to enroll during special enrollment and the date by which they need to take action.

Response: The OIC appreciates this comment.

Comment: One commenter provided detailed input into the sections of WAC 284-43-1140 that the OIC should address to clarify the overall language and to bring the rule up to date with the federal changes that have occurred since the OIC wrote the rule in 2013.

Response: The OIC appreciates these comments. In Rule 2015-16, the agency is addressing such changes in regard to all of the special enrollment rules, not just subsection (2)(a) of WAC 284-43-1140, so the agency will consider these comments in conjunction with that rule.

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 the rule.

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. The OIC's Rates and Forms Division has also added these requirements to its analyst checklists, which health carriers use to ensure that their plans comply with all applicable state and federal laws.

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. The OIC will review health plan filings to ensure that this coverage is provided.

Appendix A – Hearing Summary

Summarizing Memorandum

To: **Mike Kreidler, Insurance Commissioner**
From: **Bianca Stoner, presiding official for rule hearing**
Matter: **Rule 2016-21**
Topic: **Exchange special enrollment rule: Expanded Health Benefit Exchange request**

This memorandum summarizes the hearing on the above-named rulemaking, which was held on December 8, 2016 at 9:00 a.m. in Olympia. I presided over this hearing in your place.

No stakeholders attended the meeting, and there was no testimony.

The hearing began at 9:00 a.m. and then adjourned.

SIGNED this 8th day of December, 2016

Bianca Stoner, Presiding Official