

Comments and Responses to Supplemental Notice

Rule	AWHP Comment	OFM Response
Overall concern	<ol style="list-style-type: none"> 1. Proposed rules exceed OFM’s statutory authority. 2. Data submitters are already subject to audit by the Office of the Insurance Commissioner (OIC). 3. Concerned about the overall tone, in that it assumes wrongdoing. 4. Requests a stakeholder process to establish an informal dispute process and eliminate audits. 	<ol style="list-style-type: none"> 1. OFM already responded to the authority issue. 2. The OIC does not audit for compliance with chapter 43.371 RCW, as that is solely the authority of OFM. 3. Since random audits were removed, the rules only allow for an audit on the same grounds as an investigation, eliminating any assumption of wrongdoing. 4. There is already an informal process, and that is the preferred method, as indicated by the removal of random audits. OFM cannot eliminate its ability to audit or investigate based on knowledge of a violation of statute.
	<p>Requested the following changes, but did not indicate what rule these changes were related:</p> <ol style="list-style-type: none"> 1. Change “should be” to “must be” regarding provision of notice (WAC 82-75-710(3)). 2. Remove the requirements for a mandatory investigation. 3. OFM should only proceed if there is reasonable evidence, and add that OFM will work with the data submitter before doing an audit. 	<ol style="list-style-type: none"> 1. The rule does provide that the draft audit report “shall be provided to the subject of the audit...”. 2. If an audit reveals a violation of law, rule or data use agreement, OFM has the obligation to investigate. 3. The rule already states that the informal process should be used before ever considering an audit. OFM does not believe it needs to add “reasonable” to the rule to ensure this standard is met.
82-75-705 (When an audit may be commenced.)	Rewrote the rule to add “reasonably”, not in “substantial” compliance, and not initiating an audit before an informal process is used.	The changes limit OFM’s ability to conduct an audit when it believes that there may be a violation of law, which OFM cannot accept. The rules already require the engagement of an informal process. An audit is a last option.
Cost	Remove provision of assessing cost to an audited party if a violation is found. OFM should bear the cost, when submitters have worked in good faith with OFM.	<ol style="list-style-type: none"> 1. The rule does not allow unilateral imposition of costs on an audited party. This would be an additional penalty that could only be imposed after notice and an opportunity to be heard. As such, it would not be assessed for a good faith violation.

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Rule	AETNA Comment	OFM Response
Overall concern	Proposed rules exceed OFM’s statutory authority.	OFM already responded to the authority issue.
82-75-710(3) (Audit process)	Change “should be” to “must be” in the second sentence.	The rule does provide that the draft audit report “shall be provided to the subject of the audit...”.
82-75-720 (Audit finding of a violation)	Change “shall” require an investigation to “may” require an investigation.	If an audit reveals a violation of law, rule or data use agreement, OFM has the obligation to investigate