

CONCISE EXPLANATORY STATEMENT

SUBJECT: Concise Explanatory Statement as required by RCW 34.05.325
WAC: Chapter 82-75 WAC, All-Payer Health Care Claims Database, (WAC 82-75-030)
Additional Definitions

Pursuant to RCW 34.05.325(6)(a):

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

- (i) Identifying the agency's reasons for adopting the rule;
- (ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and
- (iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

In accordance with this requirement, the Office of Financial Management (OFM) prepared this concise explanatory statement for the rule that provides additional definitions for terms used in the operation of the Washington all-payer health care claims database (WA-APCD). The amendment to this rule, specifically to the definition of "Washington covered person" is intended to correct an error that was made when amending this definition in August 2018, which change took effect in October 2018.

Reasons for adopting the rule.

Chapter 43.371 RCW directs the Office of Financial Management (OFM) to establish a statewide all-payer health care claims database to support transparent public reporting of health care information. To accomplish this requirement, OFM is directed to establish rules necessary to implement this chapter, and to establish rules that specifically define claim and data files that suppliers must submit. OFM enacted additional definitions in WAC 82-75-030 and has added definitions as needed. Based on stakeholder feedback and experience since the WA-APCD has been implemented, the definition of "Washington covered person" needed to be amended.

The rule as originally enacted required the submission of claims data from a policy that is issued in Washington state and governed by Washington state law. The situs of the claimant was not a factor in

whether the claims data had to be submitted. The amendment to the rule, which took effect October 17, 2018, was intended to add to the definition of “Washington covered persons” Washington residents who obtain a policy in another state. However, due to an error in drafting, this change was not made correctly. This rule amendment corrects this error. Claims data for Washington residents who obtained a policy in another state has to be submitted to the WA-APCD. This rule does not change or expand the already existing requirement that claims data for out-of-state residents must be submitted if the policy is under the jurisdiction of Washington state law.

Differences between the text of the proposed rule as published and the text of the rule as adopted.

The adopted rule is the same as the proposed rule that was published.

Summary of comments, OFM response and reflection in the final rule.

When the rule was originally being amended, OFM worked with stakeholders, including members of affected state agencies and the private sector, as well as the selected Lead Organization. In addition, OFM received input from stakeholders prior to drafting the amendments to this rule, as well as comments on the prior version of the rule as it was being developed. Comments requested and received were incorporated into the final version of the rule that was the subject of this hearing.

Since a thorough stakeholder process was conducted on the original rule amendment, OFM did not hold additional meetings to discuss the correction to the rule, which is the subject of this rulemaking. OFM did publish the draft rule on the website, and sent a message to the listserv to ensure that stakeholders knew that an error was made and a correction was being proposed to the definition of “Washington covered person.”

OFM did not receive any comments until the rulemaking hearing. OFM then received comments from the Association of Washington Healthcare Plans (AWHP) and Aetna. The comments and OFM responses are provided below.

As currently written, only claims by persons who live in Washington and whose coverage is governed by Washington law are required to be submitted to the APCD. The rule as amended conforms with current practice and requires claims for Washington residents and claims from coverage governed by Washington law to be submitted to the APCD.

Both the AWHP and Aetna opine that this is too broad, beyond the scope of the APCD, as it requires claims for out-of-state residents covered by Washington governed plans to be submitted to the APCD, as well as claims for Washington residents covered by plans governed by other states.

The change in rule conforms the rule to what has been occurring since the APCD was launched, and is not a change in practice. (It is also consistent with the practices seen in similar databases operated in other states.) This practice is consistent with the law. This ensures that the APCD receives data for health care claims for Washington residents regardless of where the care has been provided. In addition, it ensures that the APCD receives data for health care claims from policies that are governed by Washington law. If the policy is issued in Washington state, claims data should be submitted regardless of where the policy holder actually gets his/her healthcare. For example, parents may provide coverage for their children, even when their children are out-of-state – for example attending college. These policies are still governed by Washington law and the Office of Insurance Commission. Finally, as with Medicare Advantage, a Washington resident can purchase a policy from another state, like California. Since the health care is being provided to a Washington resident and in most cases here in Washington, again that is data that should be included in the APCD. All the data referenced herein should be collected (and is currently being collected), and analysis of this data is within the intent of the purpose of the APCD. There is a clear nexus between Washington state and the data being requested for submission and is within the jurisdiction of chapter 43.371 RCW.