

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 82-75-700 thru WAC 82-75-720) Audits

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 rules related to audits. The rules set out the process and procedures for how and when audits may be conducted to ensure compliance with the statutes and rules related to the WA-APCD. This includes when data submitters may be subject to a compliance audit as well as when data requesters may be subject to a random audit, or compliance audit based on specific information about the use of the data.

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. This chapter has very specific requirements as to who shall submit data to the WA-APCD, what data must be submitted, who can request data from the WA-APCD, and how that data must be stored and destroyed, and how the data may be used.

RCW 43.371.070 provides that the OFM director shall enact rules necessary to implement this chapter. These rules establish a clear, fair and transparent process to ensure that statutory requirements related to submission of data into the WA-APCD, release of data from the WA-APCD, use of the data released from the WA-APCD, and the destruction of the data once the use has been fulfilled.

First Hearing – August 21, 2018

The CR 102 along with proposed rules were published in Washington State Register issue 18-15. A hearing was scheduled and held on August 21, 2018 to provide an opportunity for comments. In addition, OFM accepted written comments submitted by August 21, 2018 on the proposed rules.

Summary of comments and OFM response.

OFM worked with stakeholders, including carriers, data submitters, state agencies, and other private stakeholders, as well as the Lead Organization and the Data Vendor. In addition, OFM received input from stakeholders prior to drafting these rules, as well as comments on prior versions of the rules. Many comments requested and received were incorporated into the proposed version of the rules that was the subject of this hearing.

At the August 21st hearing, only one person provided comment. Adrianna Simonelli, from Regence, stated “We just wanted to say that we appreciate OFM removing references specifically to substance use disorder data and mental health claims as there still is uncertainty around what we need to submit or what we should be submitting. And we appreciate OFM incorporating so much of the carrier feedback.”

In addition, OFM received written comments from Regence Blue Shield, and Association of Washington Health Plans (AWHP). Attached is a summary of the AWHP’s comments and OFM’s response. In addition, a copy of AWHP’s letter is attached for your reference.

Differences between the text of the proposed rule as published and the text of the rule published for a second hearing.

Based on the comments received, the following changes were made to the text of the proposed rules that were published.

- WAC 82-75-705. In subsection (1), OFM removed the language that provided for random audits of data suppliers. In subsection (2), clarified that both data suppliers and data requesters may be subject to an audit based on notice of one of the events listed in subsection (a) through (e). Subsection (e) was added to ensure that the criteria was not so limiting as to prevent OFM from being able to conduct an audit when there is indication that a violation of law or rule may have occurred.
- WAC 82-75-710(5). The lead organization was removed so that the final report shall be provided directly to OFM and the subject of the audit. In addition, language was added to make clear that

the final report should include any response provided by the subject of the audit, so that the response will be included and can be read in conjunction with the audit report.

- WAC 82-75-715. In subsection (1), the lead organization was added as a party that can provide input to OFM when developing the audit guide. Added specific topics that must be included in the audit guide so that it will be clear that these areas of concern are covered in a document developed by OFM with the input of stakeholders, similar to the process for adopting rules. In subsection (2), changed from lead organization to OFM as the entity that will develop the process for stakeholder review and comment on drafts and final audit guide. Added a requirement that the Data Policy Committee will review the proposed audit guide and all stakeholder comments and provide input to OFM prior to adopting the final audit guide. Added a new subsection (3) to require OFM to conduct an annual review of the audit guide and seek stakeholder input during this annual review.
- WAC 82-75-720. Language was added to clarify that an assessment of audit costs to the subject of an audit is an additional penalty that can only be assessed after an investigation is conducted pursuant to chapter 82-75 WAC, a violation is found, and the subject is provided notice and an opportunity to be heard.

Because the changes to the rules are material, a second hearing is being held on the updated proposed rules. The CR 102 and updated rules have been filed and a hearing scheduled for October 23, 2018.

Supplemental Hearing – October 23, 2018

The Supplemental Notice CR 102 along with the revised proposed rules were published in Washington State Register issue 18-19. A hearing was scheduled and held on October 23, 2018 to provide an opportunity for comments. In addition, OFM accepted written comments submitted by October 23, 2018 on the proposed rules.

Summary of comments to supplemental hearing and OFM response.

At the October 23rd hearing, only one person attended, but did not provide comment. OFM did receive written comments from two entities: AWHP and Aetna. Attached is a summary of the comments and OFM's response. In addition, a copy of each letter is attached for your reference.

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

No changes were made based on the comments received from the Supplemental Notice.