

**Washington State Health Benefit Exchange Comments on the Office of the Insurance Commissioner's
Proposed Rule CR-102 (Implementing RCW 34.05.320)**

Open and Special Enrollment Periods for Small Group and Individual Health Plans

The Washington Health Benefit Exchange (WAHBE) hereby respectfully submits comments to the Washington State Office of the Insurance Commissioner (OIC) on the proposed rules for open and special enrollment periods in small group and individual health plans inside and outside the Exchange. The provisions of the OIC's proposed rules described in our comments below are contradictory to federal regulation governing state-based exchanges, with which the Exchange has been built to comply. We do not believe there is room for state interpretation to the extent that it contradicts federal law.

Individual Health Plans

A. Limitation of special enrollment right to same metal tier (WAC 284-170-425)

We continue to find the metal tier limitations of subsections (3) and (3)(c) unacceptable for plans in the Exchange. These sections limit special enrollees to the plans within the same metal level under which they were previously enrolled. We believe that the metal level limitations in subsections (3) and (3)(c) are preempted by federal law governing special enrollment in qualified health plans.

We are unaware of any federal rules permitting the general limitation of metal tier. Please reconsider this limitation or direct us to federal guidance that the OIC interprets to permit the restriction. If this provision is to be retained in the final OIC rules, we would like to meet with you before the release of those rules to discuss this issue further.

B. Special enrollment qualifying events (WAC 284-170-430)

Subsection 430 needs to include placement in foster care as a qualifying event, because this is a federal requirement for plans in the Exchange.

Small Group Health Plans

A. Special enrollment qualifying events (WAC 284-170-410 and 412)

For plans offered in the Exchange, the following two qualifying events should be added in order to comply with federal law:

- Gain or loss of eligibility for Medicaid or other public health benefits.
We continue to ask for both gain and loss of Medicaid/CHIP eligibility to be listed with respect to small group plans offered in the Exchange because March 11, 2013 CMS guidance adds two additional, distinct special enrollment events for SHOP plans. These events are: (1) losing eligibility for coverage under Medicaid or CHIP, and (2) becoming eligible for assistance under Medicaid or CHIP (45 CFR 155.725 (j)(2)(ii) and (iii)).
- A qualified individual or enrollee demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide (45 CFR 155.420(d)(9) and 155.725(j)(2)(i)).

B. Special enrollment effective dates (WAC 284-170-415)

Subsection (3)(c) addresses qualifying events requiring coverage to begin the first of the month after the event.

- This subsection should be revised to provide that coverage begins the first of the month after notification of the event is given, not the first of the month after the event. Federal guidance states the rule as: “In the case of marriage, or in the case where a qualified individual loses minimum essential coverage, as described in paragraph (d)(1) of this section, the Exchange must ensure coverage is effective on the first day of the following month” (45 CFR 155.420(b)(2)(ii)). The HIPAA regulations require that coverage begins in the case of marriage or loss of minimum essential coverage special enrollment events on the first of the month after notice is given. (“For special enrollment due to marriage or loss of eligibility for other coverage, your new coverage will begin on the first day of the first month after the plan receives the enrollment request” (U.S. Department of Labor, “FAQs About Portability of Health Coverage and HIPAA,” http://www.dol.gov/ebsa/faqs/faq_consumer_hipaa.html)).
- The loss of minimum essential coverage should be added to subsection (3)(c) to comply with federal law because coverage is required to start the first of the month after notice of this event is given (45 CFR 155.420(b)(2)(ii)).

WAHBE is available and looks forward to responding to any questions about these comments. You may contact Christine Gibert, Senior Policy Analyst, at 360.688.7773 or christine.gibert@wabhexchange.org.