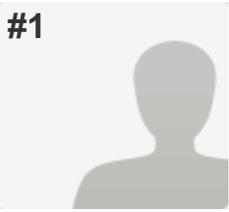


#1



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<b>Q1: Name</b>	Karl M. Johanson
<b>Q2: Phone</b>	509-334-5510
<b>Q3: Email</b>	karlmjohanson@gmail.com
<b>Q4: Organization</b>	NPIP

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**Q5: Comments**

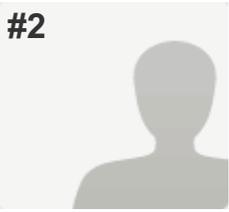
During the first session one of the attendees, a representative of one of the public body pools, actually outlined the basic issue in this dual rule making process. She spoke of the desire to keep the new WAC and the 200-100 very similar, so that "competitive balance" would be maintained. That might be germane if the public entity programs, which do compete for customers, were able to have nonprofit corporations as members. Since they cannot, the standards of operation under the new WAC should be appropriate only to the standards of operation of a nonprofit under Chapter 24.03 RCW Washington Nonprofit Corporations Act.

The meeting convener, Mr. Ziegler, stated that DES' intent is to have the new WAC "differ very little from 200-100." This intent does not incorporate the major reasons that the non-profit agencies were moved to a new RCW Section. The major reason is that the current WAC 200-100, is completely oriented to public bodies and thus non-profits were basically "alien" to the WAC. The nonprofit program has been required to adhere to the higher standard of care required of public bodies, but they are not a public body. For example: It was acknowledged in the meeting that non-profits cannot under 39.34, form interlocal agreements; instead, under the new (unnumbered) RCW Section 7 (2) "The agreement to form a joint self-insurance program may include the organization of a separate legal or administrative entity with powers designated to the entity. The entity may include or create a nonprofit corporation as defined in RCW 48.62.021." This is what NPIP, the existing nonprofit pool has done; yet the current WAC and by stated intent, the new WAC, intends to require NPIP to conduct business as if it were a public body. That is diametrically opposed to the language in the new RCW New Section 5 which states, "This chapter must be liberally construed to grant nonprofit corporations maximum flexibility in jointly self-insuring to the extent the self-insurance programs are operated in a safe and sound manner." My comment is that DES' standard of operation under the new law should be for NPIP, or any other nonprofit that may form in the future, should be to operate as a NONPROFIT in a "safe and sound manner;" rather than to operate, without legal authorization, as a public entity.

Prime examples: (A) 200-100-02011 Standards for operations - Meetings. self insurance programs are subject to the requirements of the Open Public Meetings Act as described in chapter 42.30; however, a nonprofit entity is not covered by the OPMA. (B) 200-100-02023 Standards for Operations - Elections of the governing body-cites 48.62.061 and requires a standard for elections that mirrors public elections; however, 48.62.061 directs the State Risk Manager to have, "All rules shall be appropriate for the type of program and class of risk covered." Thus, the election rules in 200-100-02023, if they are rolled over to the new WAC, will not be "appropriate" for a nonprofit corporation operating a risk sharing program under the new RCW.

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#2



**COMPLETE**

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**Last Modified:** Monday, July 20, 2015 3:54:43 PM  
**Time Spent:** 00:14:40  
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<b>Q1: Name</b>	Rich Moore
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<b>Q4: Organization</b>	NPIP (by Clear Risk Solutions)

**Q5: Comments**

Please consider the following language changes in 200-150.

**NEW SECTION**

Standards for operation – Multi-state operations.

Non-profit joint self-insurance programs domiciled in this state and operating in this state and other states must obtain any required licenses, permits and must operate within the administrative statutes permissions from the oversight agency within every state in which it operates prior to commencing operations.

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**200-100-03001**

Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements.

- (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides written estimates of the liability for unpaid claims measured at the expected level and the seventy, eighty, and ninety percent confidence level.
- (2) The governing body of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs meeting this requirement shall be considered in compliance with the primary asset test. All joint self-insurance programs that do not meet the requirements of the primary asset test shall notify the state risk manager in writing of the condition. The state risk manager may take corrective action, in the following order, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end:
  - (a) Requirement of corrective action plan within sixty (60) days of notification to the state risk manager for reaching financial solvency in a reasonable time frame, not to exceed seven (7) years. If the plan includes a proposal for reaching financial solvency in a reasonable time frame, not to exceed seven (7) years, the state risk manager shall approve the plan within thirty (30) days of receipt of the final plan submission;
  - (b) Service of cease and desist upon the program if progress is not satisfactory according to the terms of the corrective action plan;
- (3) The governing body of every joint self-insurance program operating under this chapter shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the eighty percent confidence level as determined by the program's actuary as of fiscal year end.
- (4) All joint self-insurance programs authorized by chapter RCW shall meet the requirements of both the primary asset test and the total asset test. The governing body of all joint self-insurance programs that do not meet requirements of the total asset test shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal reaching financial solvency in a reasonable time frame for completion, not to exceed seven (7) years. If the plan includes a proposal for reaching financial solvency in a reasonable time frame, not to exceed seven (7) years, the state risk manager shall approve the plan within thirty (30) days of receipt of the final plan

## Comments Form - Self Insurance

submission.

Joint self-insurance programs operating under an approved plan and making satisfactory progress according to the terms of the plan shall remain under supervisory watch by the state risk manager until the terms of the approved plan have been met. Programs under supervisory watch but not making satisfactory progress may be subject to the following requirements:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
  - (b) Submission of quarterly reports;
  - (c) On-site monitoring by the state risk manager; or
  - (d) Service of a cease and desist order upon the program.
- (5) Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include written notification to every member of the joint self-insurance program, the service of a cease and desist order upon the program, and other available remedies necessary to ensure the program operates in a financially sound manner.
- (6) All joint self-insurance programs that do not maintain total primary and secondary assets in an amount equal to or greater than unpaid claim estimate at the seventy percent, confidence level, as determined by the program's actuary, as of fiscal year end, the state risk manager may take corrective action, in the following order:
- (a) Requirement of corrective action plan within sixty (60) days of notification to the state risk manager for reaching financial solvency in a reasonable time frame, not to exceed seven (7) years. If the plan includes a proposal for reaching financial solvency in a reasonable time frame, not to exceed seven (7) years, the state risk manager shall approve the plan within thirty (30) days of receipt of the final plan submission;
  - (b) Service of cease and desist upon the program if progress is not satisfactory according to the terms of the corrective action plan;
- (7) The state risk manager shall evaluate, using solvency test results, the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.
- (8) When the state risk manager determines it necessary to analyze the program's soundness and financial safety due to failure of asset test(s), the state risk manager may obtain an independent actuarial evaluation to determine the accuracy of the estimate for unpaid claims liabilities, including the estimate of unallocated loss adjustment expenses. Costs of these services shall be the responsibility of the joint self-insurance program.

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200-100-050

Standards for claims management—Claims administration.

(8) The state risk manager may require more frequent claims audits for programs that are not operationally or financially sound based on results of the solvency test and/or reasonable standards of the industry. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

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200-100-060

Standards for management and operations—State risk manager reports.

- (4) All joint self-insurance programs shall submit quarterly financial reports if, there is failure to pass two consecutive primary asset (solvency) tests
- (5) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:
  - (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
  - (b) On-site monitoring by the state risk manager;
  - (c) Service of a cease and desist order upon the program.

#3



**COMPLETE**

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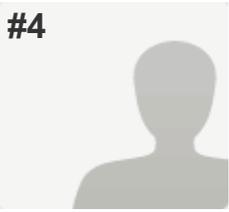
<b>Q1: Name</b>	Karl Johanson
<b>Q2: Phone</b>	509-334-5510
<b>Q3: Email</b>	karlmjohanson@gmail.com
<b>Q4: Organization</b>	Non Profit Insurance Program (NPIP)

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**Q5: Comments**

- Correction of the word programs to “program” (2nd line) for clarity:  
Definitions (4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint and individual self-insurance program as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.
  
  - WAC 200-100-02021 Standards for operation—Changes to foundation agreement.  
Proposed to: Clarify language on the foundation agreement “changes” vs. “amendments;” combine the now redundant section 200-100-030; for -02021(4) to clarify which version is the most current version of the foundation agreement.  
Propose:
    - (1) Changes or amendments to the foundation agreement shall be approved by the governing body during a meeting of the governing board.
    - (2) Approved changes to any terms of the foundation agreement shall require be adopted by the governing body of each program member and a signed copy of the new agreement submitted to the joint self-insurance program. Each time the terms of the foundation agreement change, the changes and all amendments will be incorporated into a new comprehensive foundation agreement and a signed copy of the new agreement submitted to the joint-self insurance program. The foundation agreement, along with a list of members participating in the program, shall be published on the public web site of each joint self-insurance program. The current foundation agreement and subsequent amendments shall be published on the electronic web site of the joint self-insurance program.
    - (3) Amendments to the existing foundation agreement shall be adopted by the governing body of each member and signed by an authorized representative of each member. The copy of the signed amendment shall submitted to, and shall be retained by, the joint self-insurance program.
    - (4) Each new member joining a joint self-insurance program shall sign a copy of the most current foundation agreement and amendments. The joint self-insurance program shall retain the signed foundation agreements and amendments until termination of the program occurs.
  
  - Removal of 200-100-030 Standards for management & operations – Adoption of Program. This section is now redundant since it requires adoption of foundation agreement as outlined in 200-100-02021. Language regarding publishing foundation agreement on website has been incorporated into 200-100-02021.
  
  - Clean-up of language in 200-100-038 (5) – removal of “the state auditor” since the intent is no audit by the agency.  
Propose:
    - (5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program and to obtain such records electronically when audit travel costs can be eliminated or reduced;
  
  - For consistency with proposed 200-100-02021, amend 200-100-065(2)(e) to add “or amendments” to the subpoint:
    - (2) The following program changes require written notification to the state risk manager prior to implementing the following changes:
      - (a) Increases in retention level;
      - (b) Decrease or elimination of insurance limits;
      - (c) Initial contract with a third-party administrator, or change in third-party administrator;
      - (d) Any change to bylaws;
      - (e) Any changes or amendments to the foundation agreement.
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#4



**COMPLETE**

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**Last Modified:** Friday, August 14, 2015 2:05:57 PM  
**Time Spent:** 00:12:52  
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<b>Q1: Name</b>	Richard Moore
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<b>Q4: Organization</b>	Clear Risk Solutions (NPIP)

**Q5: Comments**

WAC 200-100-02023 Our recommendation is that this WAC be modified to specifically allow electronic balloting as a form of "mail-in balloting". Further, we are recommending that each program be given authority to determine the standards for electronic balloting. It is our belief that this will increase the likelihood of members voting especially in the larger programs.

New Section. Standards for operation - Multi-state operations. We believe that this language is overly specific regarding required documents i.e. (licenses, permits, or permissions) Recommend changing to required documents. Additionally, we recommend adding "in that state" to the end of the paragraph to make it clear that documents are required in each state that the program intends to serve before operating in that state.

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#5



**COMPLETE**

**Collector:** Web Link 1 (Web Link)

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**IP Address:** 74.93.102.250

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**Q1: Name** WCRP Executive Director Vyrle Hill

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**Q2: Phone** 360/292-4495

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**Q3: Email** vyrle@wcrp.wa.gov

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**Q4: Organization** Washington Counties Risk Pool

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**Q5: Comments**

I will be away and not available to attend the October 6-7, 2015 hearings upon the proposed WAC 200-100 changes and WAC 200-150 addition. As its executive director, I wish to share some brief comments on behalf of the Washington Counties Risk Pool ("WCRP" or "Pool") that are pertinent to the WAC proposals under consideration.

We understand the impetus behind the changes to WAC 200-100 that are being proposed. We have nothing further to suggest at this time and extend our support for the changes presented.

Likewise, we understand the impetus behind new WAC 200-150. We extend our support for the new regulations presented, but with one (minor) technical suggestion and one (minor) grammatical concern. WAC 200-150-02009 requires annual membership reports which must be web-posted for at least three years, but there is no mention of a timeframe for issuing the report. Also, the last part of WAC 200-150-080(2)(a)(i) includes "... fixed and allowed for because of services..." Proper grammar would suggest that either the "for" or the "because of" needs to be removed or that a conjunctive "and" or "or" be added between those words.

That's all from us. Thanks again for the opportunity to comment.

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#6



**COMPLETE**

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<b>Q1: Name</b>	Jan L. Essenburg, General Counsel for PURMS
<b>Q2: Phone</b>	615-516-1287
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<b>Q4: Organization</b>	Public Utility Risk Management Services

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**Q5: Comments**

PURMS Proposed Amendatory Language for WAC 200-100-02021(1):

The proposed amendment of WAC 200-100-02021(1) requires that all amendments to a program's interlocal agreement "...shall be approved by the governing body at a regular meeting". PURMS governing body, consisting of one Director from each of the 19 members, has only two "regular" meetings per year, and the voting standards governing amendments to the PURMS interlocal agreement are stringent and require high member participation (i.e. either the unanimous vote of all members for amendment of key structural, governance and funding provisions, or a super-majority vote (85% of all members) for amendment of all other types of provisions).

Because of the limited number of members and the high voting standards for approval of an amendment, PURMS current interlocal agreement allows amendment by a combination of affirmative votes by Directors attending a Board meeting and, if necessary, by Members that did not vote at the meeting voting after the Board meeting by adopting Authorizing Resolutions expressing their approval and providing those Authorizing Resolutions to PURMS. The reason for allowing a "supplemental" vote by Authorizing Resolution for Members that did not vote at the Board meeting is to ensure that needed amendments can be timely adopted. Since PURMS has only two "regular" Board meetings a year, if sufficient Members necessary to satisfy the applicable voting standard were not able to attend the Board meeting for the formal vote, without the procedure allowing a "supplemental" vote by Authorizing Resolution, PURMS would have to wait another 6 months until the next "regular" Board meeting to adopt the amendments.

Also, limiting the program's ability to adopt amendments by vote only at a regular meeting is unnecessarily restrictive. So long as the thirty (30) days' notice of the proposed amendments required by WAC 200-100-02019 is provided to the program's members and to the State Risk Manager, it should not make any difference whether the meeting at which the amendments are considered is a "regular", "special" or "emergency" meeting.

PURMS suggests deleting the word "regular" and adding the language "convened pursuant to written notice as required by WAC 200-100-02019" to WAC 200-100-02021(1), as follows:

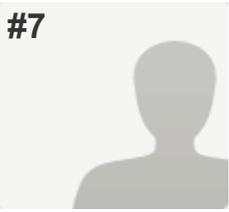
"(1) Changes to the interlocal agreement shall be by amendment and shall be approved by the governing body of each self-insurance program at a [regular] meeting of the governing body convened pursuant to written notice as required by WAC 200-100-02019."

PURMS further requests adding a second sentence to sub-¶ (1) which states:

"Notwithstanding the foregoing sentence, if permitted by the bylaws or interlocal agreement, members of the program that did not vote on the amendment at the meeting of the governing body may vote for adoption of the proposed amendment subsequent to the meeting by adopting an ordinance or resolution to that effect, as provided in WAC 200-100-02021(2)."

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#7



**COMPLETE**

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<b>Q3: Email</b>	rmoore@chooseclear.com
<b>Q4: Organization</b>	NPIP, SIAW, CIAW, WRCIP, USIP

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**Q5: Comments**

My comment is regarding WAC 200-150-190, and WAC 200-100-190, I recommend removing the words "and other states". I believe the rule will read more clearly.

Thank you,

Rich Moore

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