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October 1, 2013

Devin Proctor, Rules and Policy Coordinator
Department of Enterprise Services
Contracts and Legal Services Division
PO Box 41410
Olympia, WA 98504-1410
Email to rules@des.wa.gov

RECEIVED
OCT 03 2013

RE: Comments – CR 102 DES Proposed Rule Making

Dear Mr. Proctor,

The CR-102 states that the Department of Enterprise Services, (DES) took input from a wide-ranging group of stakeholders and that the changes to Chapter 200-100 WAC, Self-Insurance requirements governing local government and nonprofit self-insurance, came from that exchange. The previous statement is not correct. Yes, meetings were held by a committee that was called the Washington Risk Pool Advisory Committee (WRAC), but the process for how rule making would be considered by DES was never defined. At no time was a problem statement identified by the representatives from DES or members of the committee. Additionally, no minutes were taken for the meetings and members of the committee were left to wonder what decisions had been made, if at all. Finally, it appears that DES only considered proposed rule making changes that were submitted by a single member of the committee and disregarded all other proposals submitted by other members of the committee.

The rules submitted by DES for consideration were generated by a single request from a member pool representative of the committee, not by the members of the committee as a whole. At best, the requested rule changes should have been more fully vetted at the committee level to determine whether individual members of the committee can support or not support the changes. The requested rules submitted by DES are not supported by all members of the committee due to the lack of process created by DES staff members. The rule changes submitted by one representative of the WRAC committee were driven by the need of that pool member to create a legislative, competitive disadvantage for member pools that do not follow a specific insurance pooling model. The role of the DES should be to help guide rule making that provides sufficient oversight, appropriate competition and allows maximum flexibility through member voted representation. It should not be the role of DES to decide through rule making which pooling model they will support.
Proposed Change:

WAC 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.

Why this change is unwarranted:
The rules currently governing self-insurance pools require that the programs fund to the 70th percentile. We believe that the current requirement is sufficient to maintain financially solvent pools. The 70th percentile requirement was created barely two years ago and there has not been sufficient time to determine that a more stringent requirement is necessary.

WAC 200-100-03001 Standards for solvency-Actuarially determined liabilities, program funding and liquidity requirements.

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.

Why this change is unwarranted:
This requirement is too vague as to the definition of satisfactory progress. We believe that this rule allows too much discretion to the State Risk Manager including the use of a cease and desist order. We believe that this verbiage would allow unilateral power to the regulator without providing recourse mediation or resolution by some third party.

WAC 200-100-037 Standards for management and operations-Financial plans.
(d) The submission of audited financial statements to the state risk manager within eight months of the program's fiscal year end which meet the requirements of the state auditor and state risk manager as described in this chapter.

Why this change is unwarranted:
Many pools have experienced difficulties with required audits being completed within the current one-year requirement. We are concerned that this change will mean that insurance pools will be considered out of compliance with the State Regulator if the Auditor's office is unable to complete the required audit within the regulatory timeline. Additionally, we are concerned that this required change in audited financial statements will remain irrelevant as long as some insurance pools have a three year notice requirement. If the Regulator's goal is transparency for members, then reduce the notice requirement to only one year.
Many nonprofit entities provide much-needed services within their communities – services that would not be available if operating margins are increased by arbitrary regulations and rule changes. These rule changes are contrary to the intent of legislation passed 10 years ago that created the ability for governments and nonprofits to self-insure. That legislation allowed for a prudent, financially responsible process to provide less expensive options to entities that serve the public. By singling out one type of pool model, these proposed rule

changes will not enhance fiduciary responsibility. They will, however, make it more difficult for nonprofits to serve their communities.
We respectfully request the rules remain as written, and that DES look into the reasons why DES staff thought it was necessary to bring these rule changes forward.

Sincerely,

Frank Millwood
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