

As required by  
The Washington State Administrative Procedure Act  
Chapter 34.05 RCW

## **A CONCISE EXPLANATORY STATEMENT**

Relating to adoption of a new chapter in  
Title 200 WAC

**Self-Insurance Requirements as to Public Benefit Hospital  
Entities Joint Self-Insurance Programs**

March 23, 2018

## Background

The Washington State Department of Enterprise Services (DES) has proposed a new risk management rule chapter.

Rulemaking is needed to implement the rulemaking requirements of [Senate Bill 5581](#) governing public benefit hospital self-insurance programs. SB 5581 created a new chapter in [Title 48 RCW Insurance](#).

The new proposed rules largely reflect similar risk management rules, and any other changes address situations unique to public benefit hospital self-insurance programs. Solvency regulations and reserve requirements stay the same as similar rules, and the rules do not change fee structures or rates.

## Rulemaking Approach

Enterprise Services held work sessions with interested stakeholders. During these work sessions, Enterprise Services and stakeholders collaborated and jointly developed rules. As a starting point, Enterprise Services developed a preliminary draft rules document for discussion purposes, which as anticipated, was modified based on our conversations with stakeholders.

The resulting proposed rules were submitted to the [Office of the Code Reviser](#) for filing in the Washington State Register. This marked the start of a formal public comment period on the proposed rules.

Before filing the proposed rules with the Office of the Code Reviser, Enterprise Services shared a copy of the draft rules with anyone interested. The Code Reviser published the proposed rules in issue [18-03 of the Washington State Register](#).

## Summary of SB 5581

A public benefit hospital entity may include a public hospital district or a nonprofit corporation that operates a hospital in Washington or another state. Qualifying nonprofit corporations that are eligible to participate in a joint self-insurance program are limited to those that operate a hospital licensed for 360 or fewer beds by the Department of Health.

The public benefit hospital self-insurance program is similar to the local government, affordable housing, and nonprofit self-insurance programs, but is governed by a new separate chapter. Under the new program, a separate legal entity may be formed as a nonprofit or other entity under Washington law or another state's law.

Entities must submit a plan and obtain approval from the State Risk Manager before creating a program. The State Risk Manager must establish and charge a fee for the initial review and approval of the program. A public benefit hospital entity may also participate in a joint self-insurance program with entities from other states if it complies with certain specifications.

The State Risk Manager must either approve or disapprove the formation of the joint insurance program. The self-insurance program may:

- Contract for risk management and loss control services;
- Contract for legal services;
- Jointly purchase insurance and reinsurance coverage; and

The State Risk Manager must adopt rules governing the management and operation of the joint self-insurance program. The rules must include standards that preclude public hospital districts or other public entities from subsidizing entities that are not public entities. The State Risk Manager may levy fines and serve cease and desist orders for program violations.

## **Consideration and Response Summary**

On January 17, 2018, DES filed proposed rules under [WSR 18-03-099](#). Consistent with the requirements of RCW 34.05, oral and written public comments were sought from January 1, 2018 through March 1, 2017.

The department posted on its website notifications inviting participation and listing opportunities for anyone to provide both oral and written comment. In addition, state agency rule coordinators were notified by email of this rulemaking.

Opportunities to provide written comments were permitted by letter, the agency rule-making web site, and email. DES received no written comments either for or against the proposed rules during the public comment period. One comment was received at the public hearing relating to governance of out of state entities.

## **General Comments**

DES received one comment which provided input yet did not make it clear whether the proposed rules are supported or opposed.

| Stakeholder | General Comment Summary   | Response  |
|-------------|---|---|
| Knack       | <p>Sought clarification regarding WAC 200-160-280.</p> <p>I have one thing that I wanted to raise, and that is in the new section for WAC 200-160-280. The first sentence refers to this issue of formal competitive solicitation process and selection of consultants, which comprises the laws of this state and the requirements of other states in which it operates, being the risk pool. So one of the things I just wanted to think about how to encourage. I think this was intended to address allowing risk pools that are actually formed in another state to comply with its state's rules. But here, there could be situations where you have, the way it's phrased here, that in order to comply with Washington State, they may have to be in conflict with other states in which they operate. And they're just, whether trying to get clarity. Was the purpose of that to allow an organization that's formed under the rules -- or a pool that's formed under the rules of another state that then operates here, as long as it's complying with the laws of that state, that it is appropriate, or does it have to comply with the laws of that state and the laws of Washington?</p> <p>And then what happens if they're in conflict?</p> | <p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>Several other risk pools approved by the State Risk Manager are multi state pools. These pools operate in other states in compliance with the regulations adopted by the State Risk Manager. The proposed Rules for the hospital risk pools are quite similar to the Rules for other multistate pools. There have been no of a conflict in complying with regulations for multiple states. If there were an instance in which this occurred, the State Risk Manager would review the specific concern and address the issue on an individual pool basis.</p> <p>No changes were made based on these comments.</p> |

### Comments which support or appear to support

DES received one comment that reasonably appears to support the proposed rule.

### Comments which oppose or appear to oppose

DES received no comments:

- That clearly oppose the proposed rule;
- That reasonably appear to oppose the proposed rule.