

**WSR 19-01-032**  
**EMERGENCY RULES**  
**PUBLIC DISCLOSURE COMMISSION**

[Filed December 12, 2018, 10:18 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

Purpose: The 2018 legislature passed SSB 5991, chapter 111, Laws of 2018, the "Disclose Act," pertaining to campaign finance disclosure. These emergency rules are necessary to implement the act by its January 1, 2019, effective date. The commission will concurrently begin the permanent rule-making process.

Citation of Rules Affected by this Order: New WAC 390-05-521, 390-05-535, 390-16-013, and 390-16-013A.

Statutory Authority for Adoption: RCW 42.17A.110(1) and chapter 111, Laws of 2018.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The act takes effect on January 1, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: November 29, 2018.

B. G. Sandahl  
Deputy Director

**NEW SECTION**

**WAC 390-05-521 Definition—Payments received by incidental committees.** For purpose of reporting the top ten largest sources of payments to an incidental committee, pursuant to RCW 42.17A.235, a "payment" means any monetary transfers or in-kind value accepted by the incidental committee, regardless of the donative intent or benefit received by the person making the transfer.

**NEW SECTION**

**WAC 390-05-535 Definition—Nonprofit organization within the meaning of incidental committee.** A "nonprofit organization," as the term is used in the definition of incidental committee in RCW 42.17A.005, means an entity that meets one or more of the following criteria:

(1) An entity that is eligible for an exemption from income tax under section 501(c) of the federal Internal Revenue Code;

(2) An organization, association or corporation whose income is not paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization, association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state; or

(3) A limited partnership or limited liability company where an entity described in subsection (1) or (2) of this section is a general partner or managing member, respectively.

**NEW SECTION**

**WAC 390-16-013 Incidental committees—Registration and reporting for incidental committees.** (1) The official form for providing the statement of organization by incidental committees is designated the incidental committee registration "C-1-IC."

(2) The official form for reporting top ten payments and expenditures by incidental committees as required under RCW 42.17A.240 is designated "C-8." Reports must be filed electronically where the commission has provided an electronic option.

(3) For purposes of reporting the sources of the top ten largest cumulative payments of ten thousand dollars or greater, and payments received by an incidental committee, as required under RCW 42.17A.240, the C-8 report must include:

(a) The top ten sources of payments within the current calendar year through the applicable reporting period, including any changes to the top ten sources from the previous reporting period; and

(b) The total cumulative payment value, within the current calendar year through the applicable reporting period, made from a person who is reported on the current report as a source of a top ten payment.

(4) An incidental committee may request a modification or suspension of reporting requirements in cases of manifestly unreasonable hardship pursuant to RCW 42.17A.120, as set forth in these rules under chapter 390-28 WAC.

(5) Each incidental committee is automatically dissolved at the end of the calendar year in which it was registered, or upon completion of all reporting requirements for that year, whichever is later. Dissolution does not absolve the nonprofit organization that registered as an incidental committee from responsibility for any obligations resulting from the finding before or after dissolution of a violation committed prior to dissolution.

**NEW SECTION**

**WAC 390-16-013A Incidental committees—Filing reports for incidental committees.** All incidental committees required to file reports under chapter 42.17A RCW must file them electronically where the commission has provided an electronic option. The executive director may make excep-

tions on a case-by-case basis for an incidental committee that lacks the technological ability to file reports electronically. To the extent an electronic option is not provided, copies of this form are available on the PDC's web site, www.pdc.wa.gov, and at the PDC office, Olympia, Washington.

**WSR 19-01-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed December 12, 2018, 4:40 p.m., effective December 13, 2018]

Effective Date of Rule: December 13, 2018.

Purpose: The department is amending WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services? and creating WAC 388-837-9010 Must a client in an ICF/IID be able to benefit from active treatment?, to correctly reflect federal ICF/IID eligibility requirements.

Citation of Rules Affected by this Order: New WAC 388-837-9010; and amending WAC 388-825-091.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: 42 C.F.R. 483.440.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: These rules are necessary to comply with federal medicaid law. Failure to enact these rules immediately jeopardizes the receipt of federal funds. This is the second emergency rule filing on these rules. The department is progressing through the permanent rule-making process on these rules. The rules have been through internal and external review. Currently, the department is considering the comments received from external stakeholders. This subsequent filing is necessary to keep the rule effective until the permanent rule-making process is complete.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: December 5, 2018.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

**WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services?** (1) If you are twenty-one years of age or over, you are eligible to receive residential habilitation center (RHC) services if:

(a) You have been determined to meet DDA eligibility criteria;

(b) You choose to receive services in the RHC;

(c) ~~((You need the level of care provided at the RHC; and~~  
~~(~~†~~))~~ DDA has determined that you can be supported safely in an RHC environment and will not pose a danger to other residents of the RHC; ~~((~~†~~))~~ and

(d) You need the level of care provided at the RHC, which is either:

(i) Nursing facility level of care under WAC 388-106-0355 for a client admitted to a state-operated nursing facility;  
or

(ii) Intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care under WAC 388-837-9010, WAC 388-828-1020, and 42 C.F.R. 483.440 for a client admitted to a state-operated ICF/IID.

(2) If you are sixteen through twenty years of age, and meet (1)(a) through (d) above you may not be admitted to receive services at a residential habilitation center unless there are no service options available in the community to appropriately meet your needs. Such admission is limited to the provision of short-term respite or crisis stabilization services.

(3) If you are under age sixteen you are not eligible to receive services at a residential habilitation center.

(4) Admission to a nursing facility at a RHC also requires completion of preadmission screening and resident review (PASRR) requirements as described in chapter 388-97 WAC.

NEW SECTION

**WAC 388-837-9010 Must a client in an ICF/IID be able to benefit from active treatment?** An individual admitted to a residential habilitation center's intermediate care facility for individuals with intellectual disabilities must be in need of and able to benefit from continuous and aggressive active treatment.

**WSR 19-01-064**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 18-333—Filed December 14, 2018, 3:44 p.m., effective December 14, 2018, 3:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000V; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 14, 2018.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-330-16000V Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. December 22 2018 through 11:59 p.m. December 22, 2018, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(2) Effective 12:01 p.m. December 20, 2018 through 11:59 p.m. December 23, 2018, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. December 21, 2018 through 11:59 p.m. December 21, 2018 and 12:01 p.m. December 23, 2018 through 11:59 p.m. December 23, 2018 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. December 20, 2018 through 11:59 p.m. December 20, 2018 and 12:01 p.m. December 22, 2018 through 11:59 p.m. December 22, 2018, razor clam dig-

ging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) It is unlawful to dig for razor clams at any time in the Long Beach, Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 24, 2018:

WAC 220-330-16000V Razor clams—Areas and seasons.

### **WSR 19-01-065 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 18-334—Filed December 14, 2018, 3:45 p.m., effective December 15, 2018, 8:00 a.m.]

Effective Date of Rule: December 15, 2018, 8:00 a.m.

Purpose: Amend commercial crab rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500P; and amending WAC 220-340-455.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule maintains the current closures of Region 2 East and Region 2 West. The provisions of this rule will continue the Puget Sound commercial crab harvest in Regions 1, 3-1, 3-2, 3-3 East and 3-3 West. This rule increases the pot limits in Region 1 from thirty pots per license to thirty-five pots per license. Pot limits in Regions 3-2, 3-3 East and 3-3 West will remain at sixty pots per license. In Region 3-1, fishers are still allowed to use their maximum of one hundred pots per license. There is sufficient allocation available in the commercial regions to accommodate the continued opening. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 14, 2018.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-340-45500Q Commercial crab fishery—Seasons and areas—Puget Sound.** Notwithstanding the provisions of WAC 220-340-455:

(1) Effective at 8:00 a.m. December 15, 2018, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 35 pots per license in Crab Management Region 1. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

(2) Effective immediately, until further notice, Crab Management Region 2W is closed. Region 2 West includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D and 26AW.

(3) Effective immediately until further notice, Crab Management Region 2E is closed. Region 2 East includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(4) Effective immediately, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 60 pots per license in Crab Management Region 3-2, Region 3-3 East or Region 3-3 West. These regions include Marine Fish-Shellfish Catch Reporting Areas 25A, 25E, 23D, 23C and 29.

(5) Effective immediately, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 100 pots per license in Crab Management Region 3-1. This region includes Marine Fish-Shellfish Catch Reporting Area 23A and 23B.

(6) All remaining buoy tags per license must be onboard the designated vessel and available for immediate inspection.

(7) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(8) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

#### REPEALER

The following section of the Washington Administrative code is repealed effective 8:00 a.m. December 15, 2018:

WAC 220-340-45500P Commercial crab fishery—Seasons and areas—Puget Sound. (18-328)

#### **WSR 19-01-081 EMERGENCY RULES OFFICE OF THE**

#### **INSURANCE COMMISSIONER**

[Filed December 17, 2018, 3:06 p.m., effective December 17, 2018, 3:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On June 19, 2018, the United States Department of Labor (DOL) issued a final rule on Association Health Plans (AHP) <https://www.federalregister.gov/documents/2018/06/21/2018-12992/definition-of-employer-under-section-35-of-erisa-association-health-plans>. The DOL rule greatly expands the ability of small businesses and self-employed individuals to band together by geography or industry to provide health care coverage to their employees as if they were a single large employer. It establishes a set of requirements that associations and the health plans they offer must meet in order to offer coverage under the new rule.

Under the final federal rule, there are two types of associations that can offer health plans. Under the rule, both types of associations are considered a "bona fide group or association of employers":

- Pathway 1: AHPs that are formed and offered under "pre-rule guidance" issued by DOL prior to issuance of the new rule on June 18; and
- Pathway 2: AHPs that are formed and offered under the criteria of the new rule.

Under the federal rule, fully-insured Pathway 2 AHPs can be filed with states beginning September 1, 2018.

Citation of Rules Affected by this Order: New WAC 284-43-9000, 284-43-9010, and 284-43-9020.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.733.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The federal AHP rule allows new "Pathway 2" AHPs to file forms and rates with the office of the insurance commissioner (OIC) beginning September 1, 2018. There are no current state rate or form rules related to Pathway 2 AHP filings. Emergency rules are needed to establish requirements for rate and form filing that are unique to this new type of AHP. Emergency rule making will ensure that regulations are in place in order to respond to and review Pathway 2 AHPs filed with OIC for sale in Washington state.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 0, Repealed 0.

Date Adopted: December 17, 2018.

Mike Kreidler  
Insurance Commissioner

## SUBCHAPTER M

### ASSOCIATION HEALTH PLANS

#### NEW SECTION

**WAC 284-43-9000 Definitions.** "Pathway 2 Association Health Plan" means a health plan offered by a bona fide employer group or association acting in the interest of an employer under section 3(5) of the Employee Retirement Income Security Act (29 U.S.C. 1002(5)) that meets the requirements set forth in paragraphs (b) through (e) of 29 C.F.R. 2510.3-5.

#### NEW SECTION

**WAC 284-43-9010 Requirements for Pathway 2 Association Health Plan form filings related to the bona fide status of Pathway 2 Associations.** (1) Carriers must document in their form filings compliance with the requirements of 29 C.F.R. 2510.3-5 related to the bona fide status of a group or association as an employer under 29 U.S.C. 1002(5) as provided in this section.

(2) Carriers must file a group health plan, other than a small group health plan, form filing as provided in RCW 48.43.733. The form filing for an association health plan submitted by a carrier must include documents related to "Evidence as an Employer." The documents must include, at a minimum:

(a) The employer group or association's bylaws;

(b) A trust agreement or other organizational document that shows the purpose of the employer group or association and who governs the employer group or association;

(c) A statement of the employer group or association's history;

(d) An advisory opinion from the United States Department of Labor (DOL) demonstrating the employer group or association is qualified to purchase association health plan coverage. If such an advisory opinion is not available, a signed opinion from an attorney attesting to the fact that the employer group or association qualifies as an employer under 29 U.S.C. 1002(5). The attestation must explain how and why the employer group or association meets each of the requirements below, with explicit references to relevant language drawn from the employer group or association's bylaws, trust agreement or other organizational document, the statement of the employer group or association's history or other documentation submitted with the filing that is necessary to complete the attestation under this subsection:

(i) The employer group or association members have sufficient commonality of interest, due to either:

(A) The members of the employer group or association are in the same trade, industry, line of business or profession. A list of the occupational categories/industrial classifications of the employers eligible to participate in the employer group or association must be submitted with the attestation; or

(B) Each employer member of the employer group or association has a principal place of business in the same region that does not exceed the boundaries of a single state or metropolitan area (even if multi-state).

(ii) If the employer group or association offers health coverage as its primary purpose, the employer group or association has at least one substantial business purpose unrelated to offering health coverage or other employee benefits. A substantial business purpose exists if the employer group or association would be a viable entity in the absence of offering health insurance coverage;

(iii) The employer group or association does not discriminate on the basis of an individual's health status with respect to employer membership in the employer group or association;

(iv) Each employer member of the employer group or association participating in the group health plan is a person acting directly as an employer of at least one employee who is a participant covered under the plan. If the employer group or association offers coverage to working owners under 29 C.F.R. 2510.3-5, the employer group or association has in place mechanisms to ensure that working owners meet the minimum requirements for such status under 29 C.F.R. 2510.3-5(e) upon initial enrollment and on an ongoing basis;

(v) The employer group or association has a formal organizational structure with a governing body and has bylaws or other similar indications of formality;

(vi) The functions and activities of the employer group or association are controlled by its employer members, and the employer group's or association's employer members that participate in the group health plan control the plan. Control must be present both in form and in substance;

(vii) As provided in 29 C.F.R. 2510.3-5 (d)(1), the employer group or association does not condition employer

membership in the employer group or association on any health factor, as defined in 29 C.F.R. 2590.702(a) of any individual who is or may become eligible to participate in the group health plan sponsored by the employer group or association; and

(viii) As provided in 29 C.F.R. 2510.3-5 (d)(2), the group health plan sponsored by the employer group or association must comply with 29 C.F.R. 2590.702(b) with respect to nondiscrimination in rules for eligibility for benefits.

(3) The carrier's form filing also must include its most recently submitted Form M-1, as published by and filed with the United States Department of Labor.

#### NEW SECTION

**WAC 284-43-9020 Requirements for Pathway 2 Association Health Plan rate filings.** (1) The carrier's rate filing must document compliance with the requirements of RCW 48.43.733(3) and 29 C.F.R. 2510.3-5 as provided in this section.

(2) Under 29 C.F.R. 2510.3-5, a health plan issued to a Pathway 2 Association must comply with the nondiscrimination provisions of 29 C.F.R. 2510.3-5(d). In applying the nondiscrimination provisions, carriers must not rate the employees of different employer members of the association based on a health factor of one or more individuals, as defined in 29 C.F.R. 2590.702(a).

(3) Filings for Pathway 2 Association must include a public rate schedule. The public rate schedule must include a complete list of the premium rates for the employees and dependents covered under the plan that accounts for all variations in premiums charged. For example, if the rates vary by the covered person's age and his or her geographic area of residency, the public rate schedule must include the rates charged for all age and geographic area categories for each plan.

(4) The rate filing for a Pathway 2 Association Health Plan must include the following information and documents:

(a) A rate filing that includes rates and rate filing information only for the group or association that is the subject of the filing;

(b) A filing summary under WAC 284-43-6540 with the experience exclusively for the employer group or association that is the subject of the filing;

(c) For renewal plans, a monthly enrollment report from the most recent twelve-month experience which must be a public portion of the rate filing;

(d) A brief description of the development of rates and rating factors;

(e) If rate factors such as age, geographic area, or family size are used, provide justification and an explanation of the development of these factors; and

(f) A certification by a member of the American Academy of Actuaries, or other person approved by the commissioner, that the development of the rating factors are based on applicable actuarial standard of practices for rating a single employer, and the rating criteria in connection with this association health plan meet the requirements of nondiscrimination provisions under 29 C.F.R. 2510.3-5(d) and 2590.702(a).