



August 9, 2021

Rules Coordinator
Office of the Insurance Commissioner
State of Washington
5000 Capitol Blvd SE Olympia, WA 98501

Re: Administrative hearings (R 2021-09) stakeholder draft

Submitted electronically to: rulescoordinator@oic.wa.gov

On behalf of the Pharmaceutical Care Management Association (PCMA), we are providing the following comments in opposition to possible changes to the Office of the Insurance Commissioner's (OIC) administrative hearings as described in the recent stakeholder draft (R 2021-09).

The stated intent in the OIC's July 2nd notice of potential rulemaking under R 2021-09 is "to optimize discovery, such as limiting depositions, interrogatories, requests for production, and requests for admissions, and allow electronic service in all OIC hearings, in the interest of avoiding delays and achieving administrative efficiencies." However, because administrative hearings can result in the revocation or suspension of registration, it is imperative that a registrant's rights under the State's Administrative Procedures Act (APA), State law, and the Constitution be maintained.

The stakeholder draft limits discovery in all administrative hearings in cases involving a licensee or registrant, including the revocation or suspension of such. State law under the APA affords litigants the right to address and respond fully to all allegations and pleadings which would likely be restricted under the stakeholder draft. Under the APA, any rulemaking by any agency that affects an administrative adjudicative hearing "shall" afford a party the full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement. RCW 34.05.437(1).

The APA requires a State agency to provide actual fairness and the appearance of fairness in their administrative processes. This potential rule change would put both of these standards in jeopardy. The OIC's stated concern behind these proposed changes is to reduce potential abuses involving discovery. While potential abuses may occur, it is important to note the OIC-appointed hearing officer already has the authority, on a case-by-case basis, to manage discovery and subpoena requests as well as the ability to impose remedies for any abuse. See, RCW 34.05.446(3) and WAC 284-02-070(2)(e)(i) through (iii). As such, there is no need for the OIC to further restrict the



discovery and deposition rights of regulated entities engaged in all administrative matters before the Commissioner.

The APA also reiterates constitutionally protected property rights (such as a State license to operate) and this potential rule runs afoul of RCW 34.05.437(1) to protect a licensee as required by the following:

- (1) *The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement.*

Both the APA and current OIC regulations permit discovery and closely track what a litigant would normally enjoy in any State Superior Court under the State's Civil Rules. In fact, the OIC adopted a regulation (WAC 284-02-070) that specifically adopts, by reference, Civil Rules 26 through 37 (WAC 284-02-070(2)(e)) in a hearing before the OIC's internal hearing officer.

Restricting discovery and deposition requests of registrants in all administrative matters would impact constitutionally protected rights, including the property rights inherent in an OIC's registration, which a pharmacy benefit manager (PBM) must have to operate in the State.

For these reasons, we respectfully request the Commissioner not pursue changes to administrative hearings as described in R 2021-09.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Head", is written over a light blue horizontal line.

Bill Head
Assistant Vice President