November 8, 2021

Jane Beyer, Senior Health Policy Advisor
Washington Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504-0258
Submitted via email to: rulescoordinator@oic.wa.gov

Re: Implementation of E2SHB 1477 and Consolidated Health Care Rulemaking (R2021-16) proposed rule

Dear Ms. Beyer,

On behalf of the Association of Washington Healthcare Plans (AWHP), thank you for the opportunity to participate in a stakeholder process for the rulemaking to implement E2SHB 1477. We would like to offer the following comments to the CR102 for your consideration as the Office of the Insurance Commissioner (OIC) finalizes the rule.

WAC 284-170-280 Network reports—Format.

AWHP remains concerned with both the administrative burden of the proposed weekly reporting requirement and the ability of carriers to produce certain data elements. However, we recognize the OIC needs a mechanism to confirm compliance with the requirement from E2SHB 1477 for health plans to make next-day appointments available to members experiencing urgent, symptomatic behavior health conditions. Therefore, in lieu of removing the data reporting from the proposed regulation, we would like to recommend changes to the reporting requirements in WAC 284-170-280(3)(c).

First, we recommend changing the reporting frequency from weekly to quarterly. It is unlikely that there will be enough data to provide a meaningful report every week; a health plan is not the likely place a member will go to schedule an appointment with a health care provider. A quarterly report will also provide the OIC time to receive and digest the data before the next reports are due.

Second, we recommend the data reported to the OIC be clearly linked only to instances where a member contacts a health plan regarding the need for a next-day appointment for behavioral health services. Carriers do not have visibility into when a member calls the 988 crisis hotline, experiences non-emergent but urgent symptoms or contacts a health care provider and should only be required to report on their own processes.

Finally, we strongly recommend removal of the requirement to report the number of next-day appointments available. Carriers do not have direct access to provider scheduling systems and

provider appointment availability is not shared with health plans on a real-time basis. We believe our proposed changes will balance the OIC's need to confirm carrier compliance with the administrative burden placed on both carriers and providers to produce the required data.

In alignment with the above recommendations, we would like to propose the following changes to the language in WAC 284-170-280(3)(c):

> "(c) 988 Crisis Hotline Appointment Form D report. For health plans issued or renewed on or after January 1, 2023, issuers must make next day appointments available to enrollees experiencing urgent, symptomatic behavioral health conditions to receive covered behavioral health services. Beginning on ~~January 7~~ **April 15**, 2023, issuers must submit a ~~weekly~~ **quarterly** report that will detail their health plans' compliance with next day appointment access **when they receive requests for an appointment from enrollees.**
> (i) The report is due **on the 15th of the first month of each quarter or the first business day following the 15th calendar day containing data from the previous quarter**. ~~each Friday except on state or federal recognized holidays and in such situations the report is due the first Monday following the holiday.~~
> (ii) The report must contain all data items shown in and conform to the format of the 988 Crisis Hotline Appointment Form D report prescribed by and available from the commissioner.
> (A) If an issuer has not received any next day appointment requests **from enrollees**, the issuer must still utilize and submit the report to attest that no requests were received during the filing time frame.
> (B) If an issuer has received request**s from enrollees** for next day appointments, the issuer's report must include, but is not limited to, data to identify the issuer's name, provider network name, service area by county, ~~available appointments,~~ appointments ~~accessed~~ **scheduled**, number of appointments for which the scheduling time frame was met within one day, number of appointments for which the scheduling time frame was not met within one day and an explanation for not meeting the time frame. **The data submitted as part of this report should be specific to actual requests received by a health plan from enrollees for a next-day appointment for behavioral health services.**
> (iii) For purposes of this report, urgent symptomatic behavioral health condition has the same meaning as described in RCW 48.43.790 or as established by the National Suicide Hotline Designation Act of 2020 and federal communications rules adopted July 16, 2020."

Additionally, we respectfully urge the OIC to share the 988 Crisis Hotline Appointment Form D referenced in WAC 284-43-270(3)(c)(ii) with carriers as soon as possible to allow time to implement a supporting data process and infrastructure to comply with the reporting requirements.

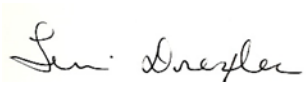
We would also appreciate an additional stakeholder process that provides an opportunity to review, discuss, and provide feedback on the 988 Crisis Hotline Appointment Form D. Carriers do not believe the proposed rule contains enough detailed information to determine what and how to report next-day appointment data to the OIC. There are certain scenarios we would appreciate the OIC address through further regulatory guidance or instructions to accompany the 988 Crisis Hotline Appointment Form D. For example, how should carriers report data if a

member does not want to use the provider that has a next-day appointment available, or if a member doesn't schedule or show-up for the appointment a carrier finds them? AWHP's member plans would be happy to meet with the OIC to discuss their questions and address their concerns related the reporting requirements as finalized by this rulemaking.

Finally, we again urge the OIC to remove the gender affirming treatment standards from the network access plan requirements in WAC 284-170-280(3)(g)(i)(J). This aligns with the OIC's removal of the other gender affirming treatment network filing requirements under the health insurance discrimination and gender affirming treatment proposed rule (R 2021-14). This subsection requires a level of specificity that is not feasible for gender affirming treatment. "Gender affirming treatment" is not a provider type, specialty type or license. Typically, a provider who may perform gender affirming treatment services is acting within the scope of their license as a plastic surgeon, surgeon, MD, etc. Because carriers do not contract with providers at the service-level, carriers may not be able to provide the data around proximity of gender affirming treatment services to primary care sources or tracking network capacity and availability for gender affirming treatment services. There is not a similar requirement for other diagnosis specific services for this reason.

We appreciate your consideration of our comments. Please don't hesitate to contact me with any questions or to discuss.

Sincerely,



Policy Analyst