



May 31, 2022

Ms. Jane Beyer
Washington State Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504
Submitted via e-mail to: rulescoordinator@oic.wa.gov

RE: Implementation of E2SHB 1688 CR-101(R 2022-02)

Dear Ms. Beyer,

On behalf of Cambia Health Solutions family of insurance companies (“Cambia”), including Regence BlueShield, Asuris Northwest Health, and BridgeSpan Health Company, thank you for the opportunity to provide feedback on the CR-101 for the implementation of E2SHB 1688 rulemaking. We are working diligently to implement E2SHB 1688, and we look forward to partnering with the Office of the Insurance Commissioner (OIC) on this rulemaking.

We appreciate the work the OIC has done to implement the Balance Billing Protection Act (BBPA) and No Surprises Act (NSA), and we strongly believe in the protections they afford Washingtonians. Cambia supported passage of legislation in the 2022 session to align the existing BBPA to the new NSA, and we appreciate the work it took from every stakeholder to see its final passage.

The following are Cambia’s comments, questions, and concerns for your consideration as you draft regulations:

Emergency Services Coverage

Section 2 of the legislation broadened the definition of emergency service providers to include “behavioral health emergency services providers.” In addition to traditional hospital emergency departments, an emergency service provider may now include crisis stabilization, triage, or evaluation and treatment facilities, agencies certificated to provide withdrawal management services or outpatient crisis services, and mobile rapid response crisis teams. These facilities and providers are not necessarily associated with an emergency department and could provide both emergency and non-emergency services. Currently, health plans typically cover services under an emergency benefit only when rendered in a state licensed emergency room, regardless of whether the service is medical/surgical or behavioral health related. Changing the place where emergency services are traditionally provided makes it challenging for health carriers, from a claims processing perspective, to distinguish emergency services

from non-emergency services. Additionally, it broadens emergency benefits place of service only for behavioral health services, which causes confusion in health care market. Clarifying what constitutes an “emergency” versus “non-emergency” service is critical as we seek to comply with E2SHB 1688. We continue to seek solutions internally to make these delineations in the claims process; however, it is important for the OIC to both be aware of this challenge and to use its authority to provide further clarification or definition in rulemaking regarding what types of services would be considered “emergency” at a behavioral health emergency services provider. Specifically, commercial carriers have not worked with mobile rapid response crisis teams and would benefit from examples of emergency services claims that could be anticipated from these providers.

Dispute Resolution and Out-of-Network Claim Payment Standard

We recommend the OIC consider any potential conflicts of interest with entities who facilitate dispute resolution at the federal level under the NSA. Between now and July 1, 2023, or a later date as determined by the OIC, most disputes in Washington will go through the state’s existing arbitration process. Additionally, it is possible after the state switches over to the NSA’s independent dispute resolution (IDR) process that behavioral health emergency services must continue to use the state arbitration process. Our concern is related to a scenario where a provider erroneously sends a claim dispute to the federal IDR process, and the IDR entity correctly rejects it to go through the state’s process. We would like to understand if it is possible for an arbiter or dispute resolution entity to be approved for use under both the state’s BBPA and the federal NSA. If that is permitted, we recommend an individual or entity be prohibited from reviewing the same dispute at both the federal and state level.

We also respectfully urge the OIC not to delay alignment of the dispute resolution process and out-of-network claims payment standard to the federal NSA any later than July 1, 2023. It is operationally challenging to maintain two different dispute resolution processes and two different sets of out-of-network rates. Additionally, providers will spend time and resources determining which law to apply. We still strongly believe one process will benefit consumers, providers, and health carriers.

Network Adequacy

As a result of the changes to RCW 48.49.150 in Sec. 18(1) of the legislation, will the OIC require new separate reports as part of carrier network access filings? The language in this section now specifically calls out “emergency medicine, anesthesiology, pathology, radiology, neonatology, surgery, hospitalist, intensivist and diagnostic services,” rather than just “emergency and surgical or ancillary services.” It may be difficult to capture those providers to report separately due to the way they often independently contract with hospitals. We may not always know what facility an independent provider is contracted with. Under current requirements, health plans do not report this level of specificity, and we respectfully request that remains unchanged.

Sec. 18(3) of the legislation states the OIC will require provider networks to include a “sufficient number” of behavioral health emergency services providers “beginning January 1, 2023.” It is unclear

from the bill language whether the OIC will expect plan year 2023 provider networks to be compliant with this requirement, or whether the OIC will apply this requirement to filings received after January 1, 2023. We believe the intent of this provision was to provide carriers additional time to add behavioral health emergency service providers to their networks. Therefore, the rule language should clarify that the requirement in Sec. 18(3) will be applied to provider network filings received by the OIC on or after January 1, 2023. Additionally, carriers and providers would benefit from further clarification on what constitutes “a sufficient number” of behavioral health emergency services providers. Without an access standard defined by the OIC, carriers will be left to guess what the OIC will use when reviewing carrier network access filings and applying enforcement actions.

Thank you for considering our comments. Please let me know if you would like to discuss any of our feedback further. I can be reached at Jane.Douthit@Regence.com or (206) 332-5212.

Sincerely,

A handwritten signature in black ink that reads "Jane Douthit". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Jane Douthit
Cambia Health Solutions
Sr. Public & Regulatory Affairs Specialist