

July 15, 2022

Barb Jones
Washington State Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504-0258

Submitted via email to: rulescoordinator@oic.wa.gov

Re: Comments on Cost-Sharing for Prescription Drugs prepublication draft (R 2022-05)

Dear Ms. Jones and rulemaking team,

Kaiser Foundation Health Plan of the Northwest, Kaiser Foundation Health Plan of Washington, and Kaiser Foundation Health Plan of Washington Options, Inc. (collectively “Kaiser Permanente”), appreciate the opportunity to provide feedback to the Office of the Insurance Commissioner (“OIC”) on Cost-Sharing for Prescription Drugs (R 2022-05). Kaiser Permanente is an integrated health care system that covers and cares for more than 760,000 members in Washington State. We are committed to delivering affordable, coordinated, and high-quality care and coverage that supports not only our members but also the communities we serve.

Thank you for holding the interested parties meeting on July 12th to discuss the prepublication draft. We have comments on three areas of the draft regulation: payments made by enrollees to pharmacies at the point-of-sale; flexibility to write certificate of coverage language; and use of statutory language in the describing the requirements for high deductible health plans with health savings accounts.

Clarify that enrollee payments are made to a pharmacy at the point-of-sale

As mentioned during the meeting, we recommend revising the language in WAC 284-43-5080 (5)(a) to more accurately reflect that enrollee payments for medications, either directly or indirectly, are made to a pharmacy. We are concerned that without this language, the regulation could create unintended consequences not encompassed by the underlying legislation. For example, a manufacturer might directly reimburse an enrollee for certain drug-related expenses. Such direct reimbursement between the manufacturer and enrollee would not constitute “cost-sharing amounts paid by the enrollee directly or on behalf of the enrollee”¹ and our suggested language clarifies that health carriers are not responsible for including such amounts in benefit accrual calculations.

Another unintended consequence of the current draft language could stem from requests made to health carriers to retroactively adjudicate a drug claim to apply a coupon or payment method that was not presented to or accepted by the pharmacy at the point-of-sale. For an accurate claims adjudication process, it is important for all forms of payment to be made by the enrollee to the pharmacy at the point-of-sale, allowing the combined information to be part of the prescription drug claim.

We recommend adding the clarifying language underlined below:

- (a) For the purposes of this subsection cost sharing or out-of-pocket amounts include payments from all sources to a pharmacy as though it was paid by the enrollee directly and must be applied in full toward the enrollee’s applicable cost-sharing as defined in WAC 284-43-0160 or out-of-pocket maximum as defined in RCW 48.43.005 consistent with RCW 48.43.xxx (Substitute Senate Bill No. 5610, chapter 228, Laws 2022).

¹ SSB 5610, C 228 L 22, Mar. 31, 2022.

Allow carriers flexibility to write their own language in the certificate of coverage

During the interested parties meeting, other stakeholders shared feedback on WAC 284-43-5080 (5)(d), requesting flexibility for health carriers to develop their own certificate of coverage language for the required disclosure, rather than prescriptive regulatory language. We support this recommendation, as this flexibility will allow health carriers to edit the language for reading level and provide the information consistent with the rest of the certificate of coverage.

Use legislative language for high deductible health plans with health savings accounts

As drafted, the language in WAC 284-43-5080 (5)(c) does not align with the legislative intent for high deductible health plans with health savings accounts. The third sentence goes beyond what the legislature contemplated by requiring that individual and family deductibles for prescription drugs be set at the IRS minimum deductible. The legislature intended cost-sharing accruals to apply once the plan's required deductible had been met, and the language was carefully written to ensure that it protected enrollees from potential tax consequences, in accordance with IRS guidance.

We respectfully recommend that, if language must be added, the regulation simply restate the language from RCW 48.43.435 (5):

This section does not apply to a qualifying health plan for a health savings account to the extent necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the enrollee's health savings account under internal revenue service laws, regulations, and guidance.

Thank you for the opportunity to provide comments on this prepublication draft. Please let us know if you have any questions.

Sincerely,



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