

July 15, 2022

Ms. Barb Jones  
Office of the Insurance Commissioner

Submitted via email to: [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov)

**Re: Prepublication Draft of R 2022-05, Implementation of SSB 5610 – Cost-sharing for Prescription Drugs**

Dear Ms. Jones:

Thank you for the opportunity to provide preliminary comments as the Office of the Insurance Commissioner (OIC) launches rulemaking to implement SSB 5610. Though we anticipate sharing more specific feedback as the rulemaking proceeds, we write at this stage to offer preliminary observations about the prepublication draft.

Northwest Health Law Advocates is a nonprofit legal organization working to expand affordable, accessible health care for Washington residents. We supported SSB 5610 and now support this rulemaking to protect Washington residents who require specialty medication to manage acute or chronic illnesses. Because these medications are often expensive, patients sometimes need to turn to patient assistance programs to cover their cost-sharing obligations. We know that these patient assistance programs can drive prices higher overall, and we support broader policy thinking about how to prevent such market distortions. But SSB 5610 recognizes that patients who rely on medications should never be caught in the middle of these market forces.

We support the goal of SSB 5610 as passed: to ensure that health plan enrollees who rely on patient assistance programs accrue toward out-of-pocket cost-sharing limits in the same fashion as other enrollees. We appreciate that OIC has proposed a pre-publication draft rule that is strongly aligned with this rule.

We are particularly supportive of the notice requirement in Section 5(d) of the pre-publication draft. This section of the draft recognizes the important role notice plays in rolling out a new consumer protection. When enrollees understand their health insurance rights, they are better equipped to advocate for themselves in accessing care to the full extent permitted by their insurance contract.

In keeping with this spirit, we suggest two possible changes to Section 5(d):

**1. OIC should evaluate whether notice of consumer rights should occur at other times.**

We strongly support the language in Section 5(d) that requires health plans to offer consumer notice of the new cost-sharing protections in the certificate of coverage. In addition, we suggest that it may be helpful for consumers to receive this notice at other moments in the enrollee experience, such as when consumers receive billing or explanation of benefit documents that list annual accruals, or even at the point of pharmacy access. We encourage OIC to foster dialogue among stakeholders about the optimal moments for consumers to receive information about the new protections in SSB 5610.

**2. OIC should include a “plain language” summary of the notice of consumer rights.**

We appreciate that OIC proposed to include an extensive articulation of consumer rights in Section 5(d)’s notice. Though we support this articulation, we suggest that OIC should consider including a plain language summary of consumer rights that carriers can quote verbatim in their enrollee documents, together with a single legal citation consumers can reference to understand their rights in a more detailed fashion. As a practical matter, both enrollees and carriers will prefer plain language explanations of consumer rights. We suggest that it is better to offer a required verbatim plain language summary in the rule itself now, rather than monitoring such summaries post hoc. It is our understanding that OIC is currently managing this problem in another rulemaking (R 2022-04, regarding adverse benefit determination notices), and we suggest that it could be avoided from the start here.

Thank you again for the opportunity to provide initial feedback on this rulemaking. We look forward to working with you and other stakeholders to ensure that Washington residents are afforded robust cost-sharing protections under the new law.

Sincerely,

Emily Brice  
Senior Attorney and Policy Advisor  
Northwest Health Law Advocates