

July 15, 2022

The Honorable Mike Kreidler
Washington State Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504-0258

RE: CR-101 – Implementation of SSB 5610 (Chapter 228, Laws of 2022) – Cost-sharing for prescription drugs

Dear Commissioner Kreidler:

On behalf of the Patient Coalition of Washington, I want to thank you for the opportunity to submit comments in support of the proposed CR-101 rulemaking to implement cost-sharing protections for prescription drugs. The Patient Coalition of Washington consists of the leading patient advocacy organizations in Washington, joining together to have one voice for better health care.

Patients with rare, complex, or chronic diseases often need high-cost specialty medications to manage their conditions and maintain their health. These patients sometimes rely on patient assistance programs offered by the manufacturers of these medications to cover the cost sharing obligations. Insurance companies in Washington have started including policies in plans that prohibit patient assistance programs from counting towards deductibles or their maximum out-of-pocket costs. Without the benefit of the patient assistance programs, many patients struggle to meet their out-of-pocket costs, which in turn hinders their ability to adhere to their treatment plan including accessing critical medications, health care providers and specialists, etc.

As passed, SSB 5610 successfully prohibits the use of these policies that discriminate against cost sharing sources. Our coalition worked in strong support of SSB 5610 and we support the agency's rulemaking efforts to ensure the legislation is effectively implemented.

We have reviewed the prepublication draft rules released by your office on June 30, 2022, and overall support the draft language as strongly supporting the intent of the legislation to make sure that patients continue to be able to utilize patient assistance programs in a way that counts toward their out-of-pocket cost requirements. We do have one request relating to section 5.c, which applies to Health Savings Account (HSA) plans.

Language Relating to Health Savings Account (HSA) Plans

We would like to request clarification regarding section 5.c of the prepublication draft. The first sentence of this section seemingly excludes all HSA plans from the patient protections provided by Substitute Senate Bill 5610. The first sentence currently reads: "A qualifying health plan for a health savings account (HSA-qualifying plan) is not subject to the requirements under RCW 48.43.xxx (Substitute Senate Bill No. 5610, chapter 228, Laws 2022)." Our understanding of federal law, which have been confirmed in conversation with the IRS, is that protections provided by SSB 5610 could be provided after the patient has paid the minimum deductible, defined by the IRS. In other words, once the patient has paid the minimum deductible, defined by the IRS, the patient should be able to utilize third-party assistance towards their cost-sharing requirements, such as the rest of their deductible or

any co-pays or co-insurance. Accordingly, it is unnecessary to exclude all HSA plans in the fashion that the first sentence of section 5.c appears to do.

We request that language be included in the rules that clarifies that HSA plans are not excluded, but rather that they be in alignment with federal IRS requirements. One solution for this language is to use a fix that has been worked out between stakeholders across the country. The below language has been adopted by the National Council of Insurance Legislators (NCOIL) within their model language on accumulator adjustment programs.

Preferred Language: If under federal law, application of this requirement would result in Health Savings Account ineligibility under section 223 of the federal Internal Revenue Code, this requirement shall apply for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under section 223, except for with respect to items or services that are preventive care pursuant to section 223(c)(2)(C) of the federal Internal Revenue Code, in which case the requirements of this paragraph shall apply regardless of whether the minimum deductible under section 223 has been satisfied.

Thank you for your consideration of this request. If we can be of further assistance, please do not hesitate to contact any of our organizations. For questions or to discuss our comments further, please contact our lobbyist, Erin Dziedzic at erin@dzpublicaffairs.com.

Sincerely,

Jim Freeburg
Patient Coalition of Washington