



August 12, 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](mailto:rulescoordinator@oic.wa.gov)

RE: Implementation of E2SHB 1688 Pre-Publication Draft (R 2022-02)

Dear Ms. Beyer,

On behalf of Cambia Health Solutions family of insurance companies, including Regence BlueShield, Asuris Northwest Health, and BridgeSpan Health Company, thank you for the opportunity to provide feedback on the pre-publication draft for the implementation of E2SHB 1688 rulemaking. We appreciate the numerous opportunities provided to partner with the OIC on this effort, and we would like to offer the following comments on the draft language for your consideration.

#### **WAC 284-43B-010 Definitions**

The facility definition in subsection (h) should reference relevant federal No Surprises Act (NSA) definitions to ensure alignment. Accordingly, we recommend the following language:

“(h) "Facility" or “health care facility” means:

- (i) With respect to the provision of emergency services, a hospital or freestanding emergency department licensed under chapter 70.41 RCW (including an “emergency department of a hospital” or “independent freestanding emergency department” described in section 2799A-1(a) of the public health service act (42 U.S.C. Sec. 300gg-111(a)) and 45 C.F.R. Sec. 149.30) or a behavioral health emergency services provider; and
- (ii) With respect to provision of non-emergency services, a hospital licensed under chapter 70.41 RCW, a hospital outpatient department, a critical access hospital or an ambulatory surgical facility licensed under chapter 70.230 RCW, including a “health care facility” described in section 2799A-1(b) of the public health service act (42 U.S.C. Sec. 300gg-111(b)) and 45 C.F.R. Sec. 149.30.”

#### **WAC 284-43B-020 Balance billing prohibition and consumer cost-sharing**

We recommend the following revisions to WAC 284-43B-020(1)(a) to account for the different cost-sharing calculation for air ambulance services under the NSA:

“...The enrollee's obligation must be calculated as if the total amount charged for the services were equal to the qualifying payment amount, or in the case of air ambulance services the lesser of the qualifying payment amount or billed charges, determined using the methodology for calculating the qualifying payment amount as determined under sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and federal regulations adopted to implement those provisions of P.L. 116-260...”

### **WAC 284-43B-030 Out-of-network claim payment and placing a claim into dispute**

We recommend WAC 284-43B-030 carve out air ambulance pursuant to RCW 48.49.160(1)(a), which carves out air ambulance from the commercially reasonable amount payment. Our suggested revisions are as follows:

“For services ~~subject to chapter 48.49 RCW~~ described in RCW 48.49.020(1) (other than air ambulance services) provided prior to July 1, 2023 or a later date determined by the commissioner, and for services provided by a nonparticipating emergency behavioral health services provider if the federal government does not authorize use of the federal independent dispute resolution system for these disputes,...”

### **Balance Billing Protection Act Arbitration Initiation Request Form**

We would like to suggest two changes to the revised arbitration initiation request form. First, in section 3, we recommend a check-box to indicate whether the person filing out the form is the legal representative of the filing party. Second, we recommend section 8(c) of the form be revised to align to the federal notice of IDR initiation by requesting line itemized amounts rather than a total final offer amount.

### **WAC 284-170-210 Alternate access delivery request**

We appreciate that subsection (2)(b) further defines what constitutes a “good faith effort” to contract with providers. However, we are concerned that the language in subsection (2)(b)(iii) may require the carrier to submit the entire contract offer made to a provider, including confidential reimbursement rates. It is our understanding that alternate access delivery request (AADR) filings are publicly accessible and subsequently, any documentation of good faith effort submitted in support of an AADR filing could also be publicly accessible. We recommend that carriers be permitted, by rule, to redact any confidential or proprietary information from written contract offers or that this subsection simply require the date each offer was made.

We also recommend subsection (2)(b) clarify that the OIC is providing examples of what may constitute evidence of good faith efforts to contract and that the examples provided in this subsection are not mandatory.

For the reasons provided above, we recommend the following revisions to the language in WAC 284-170-210(2)(b):

“(b) Evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider. Documentation of good faith efforts to contract may includes, but is not limited to:

- (i) Written requests to the provider to enter into contract negotiations for a new or extended contract, with the date each request was made and confirmation by the issuer that the appropriate staff of the provider was contacted;
- (ii) Records of communications and meetings between the issuer and provider, including dates, locations and communication format;
- (iii) ~~Written contract offers made to the provider, including~~ **The date each written contract offer was made to the provider and confirmation by the issuer that the appropriate staff of the provider was contacted;**”

Subsection (3) states “The effective date of an alternate access delivery system is the date that the commissioner notifies the issuer that the alternate access delivery system has been approved.” We would like to recommend that the OIC define, in rule, when the AADR is deemed approved if the OIC takes no action after a certain period. There is a similar provision in provider agreement filing regulations and it helps provide a predictable timeline for carriers. We would also like to recommend additional flexibility surrounding the effective date of an AADR. AADRs may be submitted well in advance of when they are needed, such as in anticipation of a future provider contract termination or in advance of a previous AADR expiring. If the AADR request defines a future effective date, such as the start of the next calendar year, we believe the regulations should allow for that, where appropriate. For the reasons provided above, we recommend the OIC incorporate the following suggested revisions to WAC 284-170-210(3):

“(3) **Unless otherwise indicated within an approved alternate access delivery request, the effective date of an alternate access delivery system is the date that the commissioner notifies the issuer that the alternate access delivery system has been approved. If the commissioner takes no action within thirty calendar days after submission, the alternate access delivery system is deemed approved except that the commissioner may extend the approval period upon giving notice before the expiration of the initial thirty-day period.**”

Finally, both subsection (2)(c) and subsection (5) in WAC 284-170-210 appear to define the length of an approved AADR. We recommend removing subsection (5) from the draft rules to avoid confusion.

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](mailto:Jane.Douthit@Regence.com) or (206) 332-5212.

Sincerely,



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