

August 12, 2022

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 R 2022-02 Implementation of E2SHB 1688

Dear Ms. Beyer,

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 the proposed regulation related to implementation of E2SHB 1688. 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.

We first want to thank the OIC for taking the approach of cross-referencing the underlying statute for definitions instead of repeating the language in the regulation. This simplifies the presentation of information in the regulation and eliminates the risk of variation between the regulation and the statute.

Our comments focus on how arbitrators are listed and aligning the time frames for alternate access delivery requests.

Revise how arbitrators are listed in WAC 284-43B-035 Arbitration Initiation and Selection of Arbitrator

The proposed regulation requires the Commissioner to send the parties a list of four individual arbitrators and one arbitration entity. The underlying statute in RCW 48.49.040 (5) contemplates that both individual arbitrators and arbitration entities will appear on the OIC’s approved list for dispute resolution. When the OIC provides a list of five arbitrators that includes individual arbitrators as well as an arbitration entity, we have found that the initiating party vetoes the arbitration entity in favor of individual arbitrators. This results in an artificially small pool of available arbitrators that may handle dispute resolution. To reflect the pool of qualified arbitrators more accurately, we recommend the OIC adjust how the list of arbitrators is presented and to list each arbitrator’s name including the arbitration entity with which they are affiliated (if applicable). For example, if an arbitration entity employs 10 arbitrators, the comprehensive list would list all 10 arbitrators and their affiliated entity. We offer the following language for consideration:

(5) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The commissioner will use the email addresses for the initiating party

and the non-initiating party indicated provided on the arbitration initiation request form for all communication related to the arbitration request. The arbitrator selection process must be completed within twenty calendar days of receipt of the original list of arbitrators from the commissioner, as follows:

(a) If the parties are unable to agree on an arbitrator from the original list sent by the commissioner, they must notify the commissioner within five calendar days of receipt of the original list of arbitrators. The commissioner must send parties a list of five arbitrators and the arbitration entity with which they are affiliated within five calendar days of receipt of notice from the parties under this subsection.

Align the time periods for alternate access delivery requests (AADR)

We have four main comments concerning the AADR time periods.

First, WAC 284-170-210 (2)(c) provides that “[e]xcept to the extent provided otherwise in subsection (5) of this section, an alternate access delivery request may be approved for up to one health plan year, one calendar year, or until the issuer executes a provider contract to address the network access issue in the alternate access delivery request”.

In WAC 284-170-210 (5) the draft regulation states that an approved AADR expires on December 31st of the year that the request was approved, or the effective date of a contract executed by the issuer and a provider, whichever occurs earlier. It omits reference to “one health plan year.” We recommend that the time frame for expiration in (5) align with time frame for an approved AADR in (2)(c).

Second, WAC 284-170-210 (2)(c) specifies a “calendar year” as a time period option rather than stating 12 months. We recommend revising the language to “12 months” to allow parties time to negotiate in good faith toward a contract. This will prevent the scenario that AADRs filed and approved during the 4th quarter automatically expire in months or weeks, requiring health carriers and the OIC to go through the administrative work to file and approve a new AADR for January 1 if an AADR is still needed. We note That the underlying statute in RCW 48.49.135 does not specify the time period for which an AADR may be approved. The OIC has the latitude to approve an AADR for a 12-month period rather than a calendar year, and we urge the OIC to make this change.

Third, in WAC 284-170-210 (3), the language states that an AADR effective date is the date on which the Commissioner notifies the issuer that the AADR has been approved. Historically, the OIC has instructed carriers to reprocess claims for alternative access providers back to the beginning of the plan year. It is unclear from the draft language if this will continue to be the expectation. Please clarify the topic of reprocessing claims as it relates to the effective date of the AADR.

Fourth, in WAC 284-170-220 (1)(d), the language states that an amended AADR expires on “December 31st of the plan year”. This language seems to focus on the individual market where the plan year aligns with the calendar year. If a large group product had a different plan year, the proposed language would result in an AADR expiring mid-plan year. Is this the intention? We would appreciate having the rulemaking team look at this section and providing clarified language.

The Association of Washington Healthcare Plans (AWHP) has suggested edits, and we support those recommendations.

We thank you for the opportunity to provide comments on this pre-publication draft and for the OIC's willingness to consider our feedback. We look forward to our continued collaboration throughout this rulemaking process. Please do not hesitate to contact us with questions.

Sincerely,



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