

Via e-mail to rulescoordinator@oic.wa.gov

Ms. Jane Beyer, Senior Health Policy Advisor
Office of the Insurance Commissioner
P.O. Box 40258
Olympia, Washington 98504-0258

September 13, 2022

Subject: Implementation of E2SHB 1688 – 2nd Prepublication Draft (R 2022-04)

Dear Ms. Beyer:

Premera Blue Cross and LifeWise Health Plan of Washington (“Premera”) appreciate the opportunity to provide comments on the pre-publication draft of the rules to implement E2SHB 1688 and align Washington’s Balance Billing Protection Act (BBPA) and the Federal No Surprises Act (NSA). We look forward to continued partnership with the Office of the Insurance Commissioner (OIC) to ensure an effective implementation. Please find below Premera’s comments on the second pre-publication draft released September 2, 2022 for your consideration:

WAC 284-43B-050 – Notice of consumer rights and transparency

Section (2)(ii) of the pre-determination draft requires carriers to include the Notice of Consumer Protections from Balance billing (Notice) *“in each explanation of benefits sent to an enrollee for items or services with respect to which the requirements of RCW 48.49.020 and WAC 284-43B-020 apply.”* Section (5) further requires that carriers *“ensure that notices provided under this subsection are included for those patients who may have disabilities or limited-English proficiency.”*

Premera Recommendation: Premera urges the OIC to align with the provisions of Section 1557 of the Affordable Care Act regarding meaningful access to members with disabilities and limited English proficiency. Section 1557 requires carriers to provide taglines (or Notice of Availability of Services and Auxiliary Aids in the 2022 proposed rule) with significant member communications, including explanation of benefits. The taglines notify the member of the availability of language assistance services and provide an accessible phone number through which the member may receive language services. Premera strongly encourages the OIC to follow the language access provisions in Federal statute and not to impose separate requirements under this subsection. Premera believes that providing the required taglines along with the explanation of benefits and accompanying Notice accomplishes the OIC’s intent of providing language access to members. The translated versions of the notice posted on the OIC website may be provided to members upon request.

WAC 284-170-280 – Network Reports

Section (e)(J) requires carriers to provide a geographic network map of contracted behavioral health emergency services, including provider location to demonstrate that each enrollee in the service area has access from either their residence or workplace which meets the urban and rural standards defined by the OIC. Additionally, the second pre-determination draft adds a requirement that the map must include *“at least*

three types of behavioral health emergency services providers defined in RCW 48.43.005, one of which must include a mobile rapid response crisis team."

Premera Recommendation: Premera believes the additional requirement to include three types of behavioral health emergency service providers exceeds the scope of the legislation. The legislative text states "*When determining the adequacy of a carrier's proposed provider network or the ongoing adequacy of an in-force provider network, beginning January 1, 2023, the commissioner shall require that the carrier's proposed provider network or in-force provider network include a sufficient number of contracted behavioral health emergency service providers (section 18 (3)).*" The statute does not require carriers to contract with a specific type or number of providers, so long as the carrier's network includes behavioral health emergency service providers and meets the network access standards.

Premera strongly believes that carriers should be given the flexibility to choose which types of behavioral health emergency services providers they contract with based on the carrier's unique credentialing criteria and the availability of providers able to contract in each service area. Additionally, we would welcome assistance in identifying the providers licensed under these specific licensures to improve our network.

Further, Premera strongly urges the OIC to delay the effective date of this section until January 1, 2024. Many behavioral health emergency services providers currently operate in the Medicaid space but do not contract with commercial insurers. Work is currently underway within the industry to define the operational mechanisms needed to support the contracting and claims payment processes which will be required to support the addition of behavioral health emergency services providers to commercial carrier networks, but due to the complexity of the issues being worked, it is not reasonable for carriers to complete the contracting process to support a January 1, 2023 effective date.

Thank you again for the opportunity to provide input. We look forward to continuing the discussion on this topic. Please feel free to contact me if you would like to discuss any of the comments in this letter.

Sincerely,



Megan M Hartman
Manager, Regulatory Compliance
Premera Blue Cross