



October 3, 2022

Commissioner Mike Kreidler
Washington State Office of the Insurance Commissioner
302 Sid Snyder Ave., SW
Olympia, WA 98504
EMAIL: rulescoordinator@oic.wa.gov

SUBMITTED VIA EMAIL AND WEB FORM

Re: Proposed Rule on Cost-Sharing for Prescription Drugs (R 2022-05)

Dear Commissioner Kreidler:

The Pharmaceutical Care Management Association (“PCMA”) appreciates the opportunity to comment on the Washington State Office of the Insurance Commissioner’s (“OIC”) proposed rule (“Proposed Rule”) for cost-sharing on prescription drugs (R 2022-05). This Proposed Rule amends the Washington Administrative Code (“WAC”) to implement Substitute Senate Bill (“SSB”) 5610, enacted by the 67th Legislature during the 2022 Regular Session. As stated by the OIC, the language of the Proposed Rule is intended to provide consistency and transparency for enrollee contribution calculations, particularly those using third party payment assistance.

We are thankful for many of the changes the OIC made between the June 30, 2022, prepublication draft and the current August 23, 2022, Proposed Rule. These changes reflect requests made by PCMA in the comment letter we submitted for the prepublication draft on July 15, 2022. However, we do have some remaining concerns with the current language of the Proposed Rule, as outlined below.

WAC § 284-43-5080 (1) – Prescription drug benefit design

The prepublication draft language detailing exceptions for coupons counting if there is a generic, biosimilar, or therapeutic alternative available has mostly been removed.

- PCMA respectfully requests that reference to the underlying statute, including the recently enacted bill language of SSB 5610, be included, to make any necessary distinctions needed between “therapeutic class” and “therapeutic alternative.”

WAC § 284-43-5080 (5)(a)

Currently, the Proposed Rule does not include any clarifying language with regard to potential issues arising for enrollees with a high-deductible health plan (“HDHP”) and a health savings account (“HSA”). Existing language states:

- For the purposes of this subsection, any cost sharing amount paid directly by or on behalf of the enrollee by another person for a covered prescription drug, at the time it is



rendered, must be applied in full toward the enrollee's applicable cost-sharing as defined in WAC 284-43-0160 and out-of-pocket maximum as defined in RCW 48.43.005 consistent with RCW 48.43.435.

- PCMA respectfully requests that additional clarifying language be added to the Proposed Rule stating:
 - If application of subparagraph a of this paragraph would result in health savings account ineligibility under Section 223 of the Internal Revenue Code, as amended, subparagraph a shall not apply to a qualified high deductible health plan with a health savings account.

WAC § 284-43-5080 (5)(b)

In the context of a pending enrollee exception request or appeal of a denial, the language of the Proposed Rule does not align with how this process is operationalized by a pharmacy benefit manager (“PBM”) or a health plan. Without an approved exceptions request, there would be no benefit coverage for the drug at issue. Thus, no cost-sharing.

- PCMA respectfully requests that the language in subsection (5)(b) be changed to remove any mention of “cost-sharing” and the delineation of the different types of cost-sharing, including, but not limited to: deductible, copayment, coinsurance, or out-of-pocket maximum.

Again, we appreciate the opportunity to provide comments on the OIC’s Proposed Rule on cost-sharing for prescription drugs.

Please feel free to contact myself or Tonia Sorrell-Neal, PCMA’s Senior Director of State Affairs (Tsorrell-Neal@pcmanet.org) with any questions or for further discussion.

Sincerely,

Peter Fjelstad

Peter Fjelstad
Director, State Regulatory & Legal Affairs

CC: Barb Jones, Senior Health Policy Analyst and Rules Coordinator, WA OIC