



Mike Kreidler- Insurance commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R 2022-04**

**CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS
SUMMARY; RULE DEVELOPMENT PROCESS; AND
IMPLEMENTATION PLAN**

Relating to the adoption of

**Statement Requirement for Consumer Adverse Benefit Determination
Notices**

September 29, 2022

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Section 1: Introduction

Revised Code of Washington (RCW) 34.05.325 (6) requires the Office of Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption. The CES shall:

1. Identify the Commissioner's reasons for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences;
3. Summarize and respond to all comments received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the Commissioner's reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

The Commissioner is adopting rules to amend existing rules so a required statement for consumer adverse benefit determination notices will be at a lower, more accessible reading level.

Section 3: Rule Development Process

On June 9, 2022, the OIC filed a preproposal statement of inquiry (CR-101) to begin formal rulemaking. The CR-101 comment period was open until July 8, 2022.

The OIC released the first draft of the revised rule text on June 23, 2022, and held a meeting for interested parties on July 12, 2022.

On August 23, 2022, the OIC filed a CR-102, and the public hearing was scheduled for September 27, 2022.

The OIC held the public hearing on September 27, 2022. Comments on the CR-102 were due on September 28, 2022.

Section 4: Differences Between Proposed and Final Rule

There are no differences between the proposed version that was submitted with the CR-102 and the adopted version.

Section 5: Responsiveness Summary

The OIC received comments and suggestions regarding this rule. The following information contains a summary of the comments, the OIC’s response to the comments, and information about whether the OIC incorporated changes based on the comments.

The OIC received comments from:

- Cambia Health Solutions
- Coordinated Care Corporation
- Kaiser Permanente

Comments to the CR-101, draft rule text, and CR-102

<p>NCQA’s UM 8 Policies for Appeals Element A Internal Appeals Factor 15 Titles and Qualifications states: <i>“Appeal policies and procedures require the appeal notice to identify all reviewers who participated in making the appeal decision, including the same-or-similar specialist reviewer, when applicable, as they provide specific clinical knowledge and experience that affects the decision.</i> <i>For each individual, the notice includes:</i></p> <ul style="list-style-type: none"> • <i>For a benefit appeal: The title (position or role in the organization).</i> • <i>For a medical necessity appeal: The title (position or role in the organization), qualifications (clinical credentials such as MD, DO, PhD, physician) and specialty (e.g., pediatrician, general surgeon, neurologist, clinical psychologist).”</i> <p>Suggest allowing an exception to the statement requirement for carriers that are already required to include this information by adding the following to the rules: “A carrier is not required to include the required language in WAC 284-43-3070(2)(g) if the carrier is accredited by National Committee for Quality Assurance (NCQA) which requires carriers’ adverse benefit determination notices comply with UM 8 Policies for Appeals Element A Internal Appeals Factor 15 Titles and Qualifications and includes whether or not the expert is employed by the carrier.”</p>	<p>The Commissioner appreciates the comment but declines this request. The referenced policy addresses appeal notices. Adverse benefits determination notices are separate types of notices that generally precede the appeal request and the appeal notice, both of which are outside the scope of this rulemaking.</p>
<p>Respectfully request 90 days from the effective date of the final rule to comply with the change in requirement.</p>	<p>The Commissioner appreciates the comment and has extended the effective date to January 1, 2023.</p>
<p>Some health carriers may be able to implement language earlier than November 1, 2022, and others may need additional time to incorporate the language through their regular IT programming release cycles. Recommend that the introductory language in WAC 284-43-3070 (2)(g) be revised to: “(g) No later than January 1, 2023, the following statement:” The OIC could also then amend (2)(f) to allow a carrier to change the language earlier than the comply by date listed in (2)(g) if an earlier time frame works better for their business process.</p>	<p>The Commissioner appreciates the comment and has extended the effective date to January 1, 2023, and also added flexibility for carriers that may be able to implement the updated statement sooner.</p>

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

The OIC intends to implement the rule through the Rates, Forms and Provider Networks Division and enforce the rule through the Legal Affairs Division. OIC staff will continue to work with the carriers and interested parties with the requirements of the rule.

B. How the Agency intends to inform and educate affected persons about the rule.

After the agency files the permanent rule and adopts it with the Office of the Code Reviser:

- Policy and Legislation Division staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC's standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the OIC's website.
- OIC staff will address questions as follows:

Type of Inquiry	Division
Consumer assistance	Consumer Protection
Rule content	Policy and Legislation
Authority for rules	Policy and Legislation
Enforcement of rule	Legal Affairs
Market Compliance	Rates, Forms and Provider Networks; Company Supervision

C. How the Agency intends to promote and assist voluntary compliance for this rule.

- Policy and Legislation Division staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC's standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the OIC's website.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

The OIC will work closely with carriers and other interested parties to evaluate the effectiveness of the rule and will monitor consumer complaints and plans for non-compliance.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum

**To: Mike Kreidler
Insurance Commissioner**

**From: Shari Maier
Presiding Official, Hearing on Rule-making**

Matter No. R 2022-04

Topic of Rule-making: Statement Requirement for Consumer Adverse Benefit Determination Notices

This memorandum summarizes the hearing on the above-named rule making, held on September 27, 2022, in Olympia, Washington via a virtual meeting over which I presided in your stead. The hearing began at 3:04 p.m.

The following agency personnel were present: Jennifer Kreidler, Ron Pastuch, Andrea Jensen and Jesse Wolff.

In attendance:

Chelsea Gronenthal
Elizabeth Abekah
Frankie Kaiser
Jane Douthit
Justine Jephson
Merlene Converse
Michelle Baird
Michelle Rusk
Robert Olegario
Shannon Kubesh
Storie Madrid

Contents of the presentations made at hearing:

No testimony was presented at this hearing.

The hearing was adjourned.

SIGNED this 29th day of September 2022

*s/
Shari Maier, Presiding Official*