



Mike Kreidler- Insurance commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R2022-07**

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

Relating to the adoption of

Small Pharmacies Reporting Requirements: Reimbursement Appeals

Nov 7, 2022

TABLE OF CONTENTS

Section 1	Introduction	pg. 3
Section 2	Reasons for adopting the rule	pg. 3
Section 3	Rule development process	pg. 3
Section 4	Differences between proposed and final rule	pg. 4
Section 5	Responsiveness summary	pg. 5
Section 6	Implementation plan	pg. 6
Appendix A	Hearing Summary	pg. 7

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 reason's 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; and
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

To conform the regulations for the small pharmacy tier 2 appeals process pertaining to reimbursement settlements with pharmacy benefit managers to the changes that occurred when the OIC unit closed in March 2021 and the initial intake of appeals and review were transferred to the Office of Administrative Hearings. These updates are necessary to conform to the current procedures for process/review via electronic filing and remove the requirements for sensitive information to be filed with an appeal. The electronic process is set up to improve the security of the files and protect personal health information.

Section 3: Rule Development Process

On June 30, 2022, the CR 101 was filed providing notice of the intent to adopt rules. Comments were accepted by August 15, 2022. An interested parties meeting was held Aug 10, 2022. Interested parties commented on the general need to file appeals and concerns with small pharmacy reimbursement.

On September 6, 2022, the proposed rule (CR-102) was filed. The comment period was open until October 24, 2022. The Commissioner held a public hearing on Oct 18, 2022. There was no testimony, and no comments were received on the proposed rule. The hearing summary is in Appendix A.

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:
 Washington State Pharmacy Association
 Dorene Cornwell
 Clinton Knight

Comments to the CR-101 and CR-102

General Comment	Response
CR 101 and Interested Parties Meeting	
<p>Some PBMs do not have an internal appeal process or provide the details on how to appeal.</p>	<p>Appeals process required of the PBM is stipulated under RCW 48.200.280(3) and WAC 284-180-505. If a PBM is not complying with these processes a complaint may be filed at: insurance.WA.gov.</p>
<p>Comments were made about ensuring accommodations for persons with disabilities.</p>	<p>The Commissioner works to address accessibility concerns. And it is expected that carriers do too.</p> <p>Under WAC 284-43-5965 carriers are obligated to provide effective communication for people with disabilities.</p>
<p>The old system was easier and did not require multiple steps to complete the filing of an appeal. Being able to batch like appeals or remove any of the additional steps would be better.</p>	<p>Thank you for the comment. While the rulemaking implements a process that improves security of the personal health information, we will take it under advisement that system improvements that allow filing of multiple claims and/or eliminating additional steps during submission would be appreciated.</p>
<p>Can appeals outcomes be generalized? Pharmacies file the same appeals repeatedly, without a change in response by the PBM.</p>	<p>This is beyond the current rulemaking. However, the Commissioner is concerned about allegations that entities are not complying with rulings. RCW 48.200.290 grants the Commissioner enforcement authority over the chapter and complaints may be filed at: insurance.WA.gov.</p>

<p>Claims appeals do not include ERISA claims. Can that be made clearer?</p>	<p>Thank you for the reminder. The OIC will work on clarity to help direct parties to the correct resources.</p> <p>This is not a change to the proposed regulations.</p>
--	---

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

The operations unit is available to answer questions about the change in procedure and any concerns with filing with the Office of Administrative Hearings.

A step-by-step process is provided on the small pharmacy reimbursement appeals information page of the OIC website. Contact links and additional resources are also available on the page.

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

- The Policy staff will distribute copies of the final rule and the Concise Explanatory Statement to all interested parties and to its standard rulemaking listserv.
- The CR 103 documents will be posted on the Office of the Insurance Commissioner’s website.
- Questions will be addressed by the Office of the Insurance Commissioner staff, as follows:

Type of Inquiry	Division
Consumer assistance	Consumer Protection Division
Rule content	Hearings Unit
Authority for rules	Policy and Legislative Affairs
Enforcement of rule	Legal Division
Market Compliance	Company Supervision

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

- The policy and procedures were changed when the intake of appeals was moved to the Office of Administrative Hearings in 2021. The rulemaking is conforming changes to the regulations. The small pharmacy

reimbursement and appeals website has the step-by-step instructions to file a claim. There was an informational presentation following the filing of the CR 101 to provide interested parties education on the rulemaking and the process for small pharmacies to file tier 2 appeals. The steps listed under implementation will further inform and educate affected persons on the updated regulations and help promote voluntary compliance.

- 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 monitor complaints and work closely with interested parties to evaluate the effectiveness.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum

**To: Mike Kreidler
Insurance Commissioner**

**From: Barb Jones
Presiding Official, Hearing on Rule-making**

Matter No. R 2022-07

**Topic of Rule-making: Small Pharmacies Reporting Requirements:
Reimbursement Appeals**

This memorandum summarizes the hearing on the above-named rule making, held on October 18, 2022 at 10:00 am in Olympia WA via zoom over which I presided in your stead.

The hearing began at 10:04

The following agency personnel were present:
Andrea Jensen
Jesse Wolff

In attendance and testifying:

There was no testimony

In attendance and not testifying:

- Beau Reitz
- Boris Zhang
- Diana Solano
- Katrina Jackson
- Shea Wilson
- Tonie Sorrell Neal

Contents of the presentations made at hearing:

No presentations were made at the hearing.

The hearing was adjourned.

SIGNED this 18th day of October 2022

*s/
Barb Jones, Presiding Official*