



August 31, 2023

Rules Coordinator
Washington Office of the Insurance Commissioner
P.O. Box 40260
Olympia, WA 98504-0260
Submitted via email to: rulescoordinator@oic.wa.gov

Re: Comments on Consolidated Health Care Rulemaking Prepublication Draft (R 2023-07)

To whom it may concern,

On behalf of the Association of Washington Healthcare Plans (AWHP), thank you for the opportunity to provide comments on the consolidated health care rulemaking.

AWHP previously submitted comments on the CR-101 for these rules; we respectfully request the OIC address those concerns in the proposed rule language. Health plans are designing and configuring benefits for the 2024 plan year now, and without further clarification through rulemaking or other regulatory guidance, there is a risk that noncompliant plans will enter the market unknowingly. To help ensure our industry has the needed clarity to implement the underlying legislative requirements, we reiterated those concerns and provided draft rule language where possible below.

ESHB 1222 – Requiring coverage for hearing instruments

ESHB 1222 generally requires health plans to cover hearing instruments and certain associated services without applying an enrollee's health plan deductible. However, the bill is silent regarding the application of other types of health plan cost-sharing, such as co-pays and co-insurance. Because ESHB 1222 does not explicitly prohibit it, we recommend the rules clarify that normal plan cost-share design may be applied to the required hearing instruments and services coverage, except for a deductible.

E2SHB 1222 does not differentiate coverage requirements for hearing instruments and services received from participating versus non-participating providers. Consistent with our recommendation above, we respectfully request that the rules clarify that normal plan design may be applied in terms of network structure. For example, if a health plan does not have out-of-network benefits for other services, that structure should be applied consistently to a hearing instrument benefit as well.

We recommend the following language be inserted between draft WAC 284-43-5937 (4) and (5) to address these concepts.

(5) With the exception of deductible requirements referenced in section 1(4) of chapter 245, Laws of 2023, coverage for the services and hearing instruments covered under chapter 245, Laws of

2023 may be subject to terms and conditions generally applicable to the health plan, including applicable cost-sharing and network requirements.

SB 5242 – Prohibiting cost-sharing for abortion

SB 5242 generally prohibits health plans from imposing cost-sharing for abortion of pregnancy. Again, we respectfully request clarification through this rulemaking whether the intent of the legislation was to prohibit cost-sharing for services received from both participating and non-participating providers. Related, we would like the rulemaking to clarify whether carriers can apply utilization management criteria such as prior authorization if the OIC determines the intent of SB 5242 is to prohibit cost-sharing for abortion services from non-participating providers.

We recommend the following language be inserted within WAC 284-43-7220 to address these concepts.

(2)(d) Coverage for abortion of pregnancy may be subject to the other terms and conditions generally applicable to the health plan’s coverage of maternity care or services, including network requirements.

We appreciate that the draft rules create a definition for “abortion of pregnancy.” We still believe further clarification is needed to fully define which ancillary services associated with abortion must be covered without cost-sharing. For example,

- Which clinical settings should be included (e.g., in-patient, out-patient, facility types, emergency services, etc.)?
- Do prescriptions drugs include medications intended to treat complications associated with an abortion (e.g., antibiotics for an infection)?
- How do we handle ancillary charges with a different date of service (DOS) from the abortion date (e.g., a pathologist reviews the labs on a different day [billing for that day] or it’s different from the original date of service)?
- Does the cost-share waiver include any follow-up appointments?

SSB 5396 – Cost-sharing for diagnostic and supplemental breast examinations

SSB 5396 generally prohibits health plans from imposing cost-sharing for supplemental breast examinations and diagnostic breast examinations. Again, we respectfully request clarification through this rulemaking regarding whether the intent of the legislation was to prohibit cost-sharing for services received from both participating and non-participating providers. Related, we would like the rulemaking to clarify if carriers may apply utilization management criteria such as prior authorization for supplemental breast examinations and diagnostic breast examinations.

We recommend the following changes to the draft language to address these concepts:

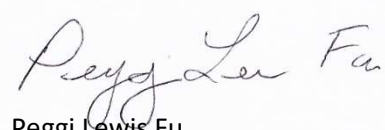
WAC 284-44-046(3) Coverage of mammograms may be subject to standard contract provisions, except the cost-sharing provisions prohibited by chapter 366, Laws of 2023, which are applicable to other diagnostic X-ray benefits such as network requirements and utilization management.

WAC 284-46-110(2)(a) Coverage of breast examinations may be subject to standard contract provisions, except the cost-sharing provisions prohibited by chapter 366, Laws of 2023, such as network requirements and utilization management.

WAC 284-50-270 (3) Coverage of mammograms may be subject to standard contract provisions, other than the cost-sharing provisions prohibited by chapter 366, Laws of 2023, which are applicable to other diagnostic X-ray benefits such as network requirements and utilization management.

We appreciate the opportunity to comment and your consideration of our feedback. Please don't hesitate to contact me with any questions or to discuss.

Sincerely,

A handwritten signature in cursive script that reads "Peggi Lewis Fu". The signature is written in black ink on a light-colored background.

Peggi Lewis Fu
Executive Director
Association of Washington Healthcare Plans