Sept. 29, 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 Revising the Prior Authorization Process (R 2023-02)

To whom it may concern,

On behalf of the Association of Washington Healthcare Plans (AWHP), thank you for the opportunity to provide comments on revising the prior authorization process.

E2SHB 1357 did not provide a definition of "electronic." In the prepublication draft, we notice that the definition is more specific and includes the new concept of email being considered an "electronic" request. Email requires just as much data entry as a fax or a phone call to get the information into the prior authorization system. We consider electronic submission to be a two-way communication system that puts relevant information directly into the prior authorization system.

Our understanding during the legislative negotiations was that a two-way electronic communication platform needed to be used for the request to be considered "electronic." Furthermore, to achieve the goal of the legislature to modernize prior authorization, the bill gave providers an incentive of faster turnaround times if they submitted prior authorization requests through an electronic process that leverages technology. Other national entities have begun addressing electronic prior authorization and do not recognize email as an electronic request. Resources from those organizations include HIPAA Administrative Simplification regulations, the API standards adopted by Office of the National Coordinator for Health Information Technology (ONC), and the Council for Affordable and Quality Health Care (CAQH) Index.

We request that the OIC change the regulation to specify the following:

> (e) For purposes of this subsection, the following definitions apply:
> (i) An "electronic prior authorization request" is delivered via a two-way electronic communication system that meets the requirements of a secure online prior authorization process under WAC 284-43-2050 or an interoperable electronic process or prior authorization application programming interface under RCW 48.43.830.
> (ii) A "non-electronic prior authorization request" is delivered through email, a phone call, a text message, a fax, U.S. mail, or any other method that does not meet the definition of an electronic prior authorization request.

E2SHB 1357 defines the timeframes that carriers must request additional information from a provider or facility that is needed to make a decision on a prior authorization request. It does not define the amount

of time a carrier should give a provider or facility to produce the additional information, nor does it define how long the carrier has to make a decision once additional information is received, or if information is not received, how long the carrier has to make a decision. Existing regulations under WAC 284-43-2050 do provide that level of detail but are expiring on December 31, 2024. AWHP is concerned that carriers will be left to determine a reasonable standard independently, which could differ from the legislative intent and vary across health plans. The lack of clarity and uniformity within the industry may lead to provider abrasion. We recommend the OIC define reasonable turnaround times for providers in these rules.

E2SHB 1357 did not provide a definition of "holidays." In the prepublication draft, the timeframes for carrier determination for electronic prior authorization requests are defined in calendar days, excluding holidays. We recommend that the OIC change the regulation to reference an official list of state holidays, such as the Office of Financial Management's list in WAC 357-31-005.

Section (3)(a) in the prepublication draft requires carriers to base prior authorization requirements on peer-reviewed, evidence-based clinical review criteria. There may be instances where no peer-reviewed, evidence-based clinical review criteria exists, but there is a clinical consensus statement from a medical specialty group. Carriers would appreciate the flexibility to consider this information when creating clinical review criteria. Additionally, carriers should also be able to consider products and services that are less costly but equivalent in safety and efficacy to the requested product/service in their clinical review criteria. To accommodate these requests, we recommend the OIC make the following revision to the draft regulation:

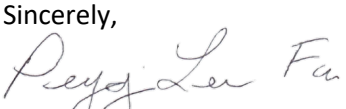
> (3)(a) A carrier or its designated or contracted representative must maintain detailed prior authorization requirements, including clinical review criteria, that are written in plain, easily understandable language and must be based on peer-reviewed, evidence-based literature, standards of care, clinical guidelines, or consensus statements from a medical specialty group. Prior authorization requirements may also consider lower-cost standard of care treatment options where an alternate service or product is likely to produce equivalent therapeutic or diagnostic results.

E2SHB 1357 requires carriers' clinical review criteria accommodate new and emerging information related to the appropriateness of clinical criteria with respect to black and indigenous people, other people of color, gender, and underserved populations. The prepublication draft provides further definition of the intended populations included in that provision. AWHP recognizes the importance of equity and nondiscrimination across all aspects of our health plans, and we would appreciate further guidance surrounding compliance with these requirements. It is not typical for clinical trials or studies to delineate results specific to these populations, making it difficult for carriers to include that in medical policies. We would appreciate the OIC providing further insight regarding the intent of these requirements, and practical guidance to demonstrate compliance.

WAC 284-43-2000 (Health care services utilization review—Generally) and 284-43-2020 (Drug utilization review—Generally) overlap and conflict in some instances with the prepublication draft. Previously, the OIC's prior authorization regulations were separated by health care services requirements and prescription drug requirements, however, E2SHB 1357 created a new set of prior authorization standards applicable to both. We strongly recommend the entire WAC 284-43 Subchapter D should be reconstructed to remove duplicate requirements and clearly outline the standards applicable to health care services and prescription drug services prior authorization processes in a single section.

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,



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