OFFICE of the INSURANCE COMMISSIONER
WASHINGTON STATE

Mike Kreidler - Insurance Commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R 2023-07**

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

Relating to the adoption of

Consolidated Health Care

**November 30, 2023**

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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 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;
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

Consolidated rulemaking is required due to the recent passage of health care and insurance related legislation. This rulemaking will aid in implementing enacted legislation, including: Chapter 314, Laws of 2011, regulating health care insurance with updated terms, Chapter 8, Laws of 2023, concerning telemedicine and timeframe requirements, Chapter 107, Laws of 2023, concerning health care benefit manager and carrier contract reporting requirements, Chapter 194, Laws of 2023, prohibiting cost-sharing for abortion, Chapter 245, Laws of 2023, requiring coverage for hearing instruments, Chapter 366, Laws of 2023, concerning cost-sharing for diagnostic and supplemental breast exams, and updating definitions in Chapter 382, Laws of 2023, relating to modernizing the prior authorization process.

The Commissioner is adopting consolidated health care regulations due to the passage of insurance related legislation, as outlined above. Currently multiple provisions of health care and insurance regulations in the Washington Administrative Code need to be updated by the Commissioner to be consistent with the legislation passed and codified in the Revised Code of Washington. These rules will facilitate implementation of the new laws by ensuring that all affected health care and insurance entities understand their legal rights and obligations under the enacted legislation.

This effort includes updating regulatory definitions for emergency medical condition and prior authorizations, clarifying hearing instrument coverage requirements, updating telemedicine timeframes, providing guidance for health care benefit manger and health carrier contract reporting requirements, and clarifying cost sharing for abortion and diagnostic or supplemental breast exams. This rulemaking impacts the following authorities: WAC 284-43-0160, 284-43-7220, 284-44-046, 284-50-270, 284-170-130, 284-180-460, and new sections in Chapters 284-43 and 284-46 WAC.

## Section 3: Rule Development Process

The CR-101 (Preproposal Statement of Inquiry) for this rulemaking was filed with the Washington State Register (WSR) on August 2, 2023 (WSR 23-16-137). The comment period for the CR-101 was open for two weeks, closing on August 16, 2023. Five written comments were received in response to the CR-101.

A prepublication draft for this rulemaking was published on August 22, 2023, with a two-week comment period ending on September 5, 2023. Six written comments were received in response to the prepublication draft.

The CR-102 (Proposed Rule Making) was filed with the WSR on October 18, 2023 (WSR 23-21-102). The Commissioner accepted comments through Wednesday, November 22, 2023. Three written comments were received in response to the CR-102.

The Commissioner held a public hearing on the proposed rule text on Tuesday, November 21, 2023, at 9:00 AM; the public hearing was administered by Sr. Policy Analyst, Michael Walker, as a virtual meeting. No public testimony or comments were provided at the public hearing.

The CR-103 (Rule-Making Order) was submitted to the Office of the Code Reviser on Thursday, November 30, 2023, for agency adoption.

## Section 4: Differences Between Proposed and Final Rule

WAC 284-43-5937(1) has been revised to remove the reference to and requirement of hearing instrument coverage *regardless of network status*. WAC 284-43-5937(4) has been updated to clarify that health carriers shall provide <u>in network</u> coverage for hearing instruments.

As enacted, there is nothing in RCW 48.43.135 that requires carriers to provide coverage of hearing instruments from non-participating providers. Given the rulemaking's purpose to clarify and interpret within the scope of agency authority, it is reasonable for the OIC to determine that out-of-network coverage is not required.

Further, some carriers may offer plans that do not include an out-of-network benefit; by limiting mandated coverage to participating providers only, this allows carriers to provide a baseline level of coverage for hearing instruments at a predictable cost.

Finally, if the law is interpreted to mandate out-of-network coverage, then the proposed rule language may have inadvertently placed consumers in the middle of billing disputes or increased premiums to account for the carrier's cost of paying non-negotiated rates to providers.

# Section 5: Responsiveness Summary

| Written Comments | Agency Considerations and Responses |
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| **CR-101 (Preproposal Statement of Inquiry)** | |
| The hearing instruments legislation does not address coverage requirements for provider network status. The rules should clarify whether health plans must provide the coverage required in ESHB 1222 regardless of if a health care provider is in or out of network. We believe the intent of the legislation was to provide coverage regardless of network status. | Thank you for your written comments. The Commissioner considered these comments and made the following changes to the rule:<br>WAC 284-43-5937(1) has been revised to no longer require hearing instrument coverage regardless of network status. This subsection of the rule language has been revised as follows:<br>*"(1) The purpose of this regulation is to effectuate the provisions of chapter 245, Laws of 2023, by requiring health carriers to include coverage for hearing instruments ~~regardless of network status~~."*<br>WAC 284-43-5937(4) has been updated to clarify that health carriers shall provide in network coverage for hearing instruments, as follows:<br>*"(4) Health carriers shall provide <u>in network</u> coverage for hearing instruments at no less than $3,000 per ear with hearing loss every 36 months."* |
| ESHB 1222 prohibits deductibles unless a health plan is a qualified high deductible health plan, but the bill is silent on other forms of cost-sharing. We recommend that the rule clarify that other forms of cost-sharing are allowed. | Thank you for your written comments. The Commissioner considered your comments and added the following to the rule:<br>*"Any enrollee cost-sharing applied to this coverage must ensure that the amount paid by the health plan will be no less than $3,000 except to the extent required otherwise in RCW 48.43.135(4)."* See WAC 284-43-5937(4). |
| ESHB 1222 specifies hearing instruments must be covered at no less than $3000 per ear with hearing loss every 36 months. Other states with similar mandates require providers to bill hearing instruments with either a LT (left side) or RT (right side) modifier to fulfill the mandate. However, this coding requirement raises concern because we cannot ensure non-contracted providers will bill accordingly and claims may be denied due to billing errors. Alternatively, we would like to provide coverage at no less than $3000 per device up to two devices every 36 months. This approach will allow members to replace a device if needed without running into a single ear restriction. This approach also aligns with the spirit and intent of the law while easing the administrative burdens on providers. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>ESHB 1222 provides that: *"(3) A health carrier shall provide coverage for hearing instruments as provided in subsection (1) of this section at no less than <u>$3,000 per ear</u> <u>with hearing loss</u> every <u>36 months</u>."* Furthermore, the legislation does not contain a device limitation.<br>If hearing instruments become an essential health benefit for plan year 2026, then due to the prohibitions in 45 CFR 147.126 the annual dollar limit will no longer apply. |
| ESHB 1222 specifies that coverage for a minor under 18 years old should only be available after the minor has received medical clearance within the preceding 6 months. If health plans are required to validate medical clearance before covering a hearing instrument, this may delay and add to administrative burdens. We recommend clarification surrounding a health plan's obligation to ensure compliance before providing access to the hearing instrument benefit. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>ESHB 1222 requires hearing instrument coverage to be available for a minor under the age of 18 years old <u>only</u> after a minor has received medical clearance (Section 1(5), Chapter 245, Laws of 2023). Rulemaking cannot supersede legislation or remove this statutory requirement.<br>The comments request changes requiring legislative amendments. |
| The rules should clarify whether the cost-sharing prohibition for abortions applies to services provided by both in-network and out-of-network health care providers. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language. |

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| | RCW 48.43.073(1) provides that *"… for health plans issued or renewed on or after January 1, 2024, a health carrier may <u>not</u> impose cost sharing for abortion of a pregnancy."*<br>The rule language clarifies that *"[e]xcept as provided in (c) of this subsection, for health plans issued or renewed on or after January 1, 2024, a health carrier may <u>not</u> impose cost-sharing for abortion of a pregnancy."* WAC 284-43-7220(b).<br>Additionally, under WAC 284-43-7220(5), the rule language outlines that *"[c]overage for abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."* |
| The rules should clarify whether plans must apply the cost-sharing prohibition for breast exams to in-network and out-of-network health care providers. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>Under WAC 284-44-046(3), 284-46-110(5), and 284-50-270(3), the proposed rule has clarified that *"[c]overage of mammograms may be subject to standard contract provisions, except the cost-sharing provisions prohibited by RCW 48.43.076, which may be applicable to other diagnostic X-ray benefits."* |
| The legislation does not differentiate coverage requirements for hearing instruments and services received from participating versus non-participating providers. We recommend the rules clarify that normal plan design may apply in terms of network structure. | Thank you for your written comments. The Commissioner considered these comments and made the following changes to the rule:<br>WAC 284-43-5937(1) has been revised to no longer require hearing instrument coverage regardless of network status. This subsection of the rule language has been revised as follows:<br>*"(1) The purpose of this regulation is to effectuate the provisions of chapter 245, Laws of 2023, by requiring health carriers to include coverage for hearing instruments ~~regardless of network status~~."*<br>WAC 284-43-5937(4) has been updated to clarify that health carriers shall provide in network coverage for hearing instruments, as follows:<br>*"(4) Health carriers shall provide <u>in network</u> coverage for hearing instruments at no less than $3,000 per ear with hearing loss every 36 months."* |
| If OIC determines that cost-sharing should be prohibited for abortion services from non-participating providers, then the rulemaking should clarify if carriers can apply prior authorization and other forms of utilization management. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>RCW 48.43.073(1) provides that *"… for health plans issued or renewed on or after January 1, 2024, a health carrier may <u>not</u> impose cost sharing for abortion of a pregnancy."*<br>Under WAC 284-43-7220(5) the proposed rule clarifies that *"[c]overage for abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."*<br>OIC surveyed carriers in the Fall of 2022 and inquired about the application of prior authorization to abortion services. The response OIC received in the aggregate was that prior authorization is not applied to abortion services. |

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| The scope of services included in the cost-sharing prohibition for abortions is not defined. OIC should clarify whether the cost-sharing prohibition applies to ancillary services and consider the operational challenges associated with linking these services to a procedure in our systems. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>Under WAC 284-43-7220(4), the proposed rule clarifies that "*… abortion of a pregnancy includes medical treatment intended to induce termination of a pregnancy, except for the purpose of producing a live birth, and all medically necessary care associated with completing treatment including but not limited to office visits, counseling, diagnostic and laboratory testing, and prescription drugs."*<br>RCW 48.43.073(1) provides that *"… for health plans issued or renewed on or after January 1, 2024, a health carrier may <u>not</u> impose cost sharing for abortion of a pregnancy."* |
| The rulemaking should clarify whether carriers may apply utilization management like prior authorization for supplemental and diagnostic breast examinations. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>Under WAC 284-44-046(3), 284-46-110(5), and 284-50-270(3), the proposed rule has clarified that *"[c]overage of mammograms may be subject to standard contract provisions, except the cost-sharing provisions prohibited by RCW 48.43.076, which may be applicable to other diagnostic X-ray benefits."* |
| The rulemaking on SB 5242 should be patient-centric, ensure the prohibitions on cost-sharing extends to all services related to and provided in conjunction with an abortion as determined by the individual's provider; and prohibit medical management techniques or annual limitations when accessing abortion services.<br>Health plans should cover the broad range of services necessary to access abortion care. We recommend that no cost-sharing for abortion includes but is not limited to diagnostics, counseling, supplies, follow-up services, and all other services related to and provided in conjunction with the abortion. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>Under WAC 284-43-7220(4), the proposed rule provides that *"… abortion of a pregnancy" includes medical treatment intended to induce termination of a pregnancy, except for the purpose of producing a live birth, and all medically necessary care associated with completing treatment including but not limited to office visits, counseling, diagnostic and laboratory testing, and prescription drugs."* |
| The rulemaking should prohibit prior authorization of abortion services. We also request that the coverage have no quantity limits for covered abortion care. OIC should strive to maximize timely access and make the process of accessing these critical services simple and consumer friendly. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>Under WAC 284-43-7220(5), the proposed rule clarifies that *"[c]overage for abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."*<br>OIC surveyed carriers in the Fall of 2022 and inquired about the application of prior authorization to abortion services. The response OIC received in the aggregate was that prior authorization is not applied to abortion services. |
| The rulemaking should minimize duplicative filing requirements for dental networks. Dental networks are regulated as health care benefit managers (HCBMS) and file their contracts with providers under the requirements of RCW 48.43.730. Requiring HCBMs to also report these contracts with health carriers could create significant confusion over which reports are required and lead to the duplication of information. These requirements could increase administrative | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>This legislation (SB 5066 (2023-24)) did not amend or alter the filing requirements of RCW 48.43.730.<br>RCW 48.43.730 and 48.200.040 outline separate statutory reporting requirements for carriers and HCBMs, respectively. |

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| spending and harm access to dental coverage through higher costs. | This rulemaking cannot remove, except, or exempt the separate statutory reporting requirements for these entities.<br>The comment requests a change that should be made through legislation. |
| We request that OIC provides clear guidance that dental networks should not have to file their contracts with carriers until the relevant rules are finalized and effective. | Thank you for you written comments. The Commissioner considered these comments and made no changes to the rule language.<br>RCW 48.43.730 is effective and was not amended by Chapter 107, Laws of 2023. Chapter 107, Laws of 2023, became effective July 23, 2023.<br>This rulemaking cannot remove or extend these entities' separate statutory reporting requirements.<br>All filings are made to the Commissioner using the System for Electronic Rate and Form Filings (SERFF). For additional information or guidance on HCBM and carrier filings, please see OIC's SERFF website, which includes specific instructions for HCBM and Carrier filings, linked here (https://www.insurance.wa.gov/system-electronic-rate-and-form-filing-serff-guidelines). |
| The extension of the deadline in SB 5036 allows for the use of audio and video technology to establish patient relationships through July 1, 2024, and is an important flexibility as we move out of the COVID-19 pandemic. SB 5242 and SB 5396 will both ensure that cost is not a barrier to patients seeking health care services. | Thank you for your written comments.<br>The Commissioner considered these comments and made no changes to the rule language. |
| **Prepublication Draft** | |
| ESHB 1222 requires health plans to cover hearing instruments and certain associated services without applying deductibles. Because the bill is silent on other forms of cost-sharing, the rules should clarify that normal plan cost-share design may be applied except for deductibles.<br>ESHB 1222 does not differentiate coverage requirements received from participating versus non-participating providers. We request that the rules clarify that normal plan design may be applied in terms of network structure. For example, if health plans don't have out-of-network benefits for other services, that structure should apply to the hearing instruments benefit as well.<br>The following language should be inserted:<br>(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. | Thank you for your written comments. The Commissioner considered these comments and made the following changes to the rule:<br>WAC 284-43-5937(1) has been revised to no longer require hearing instrument coverage regardless of network status. This subsection of the rule language has been revised as follows:<br>*"(1) The purpose of this regulation is to effectuate the provisions of chapter 245, Laws of 2023, by requiring health carriers to include coverage for hearing instruments ~~regardless of network status~~."*<br>WAC 284-43-5937(4) has been updated to clarify that health carriers shall provide in network coverage for hearing instruments, as follows:<br>*"(4) Health carriers shall provide in network coverage for hearing instruments at no less than $3,000 per ear with hearing loss every 36 months."*<br>Additionally, under WAC 284-43-5937(4), the rule clarifies that "[a]*ny enrollee cost-sharing applied to this coverage must ensure that the amount paid by the health plan will be no less than $3,000 except to the extent required otherwise in RCW 48.43.135(4).*" |
| SB 5242 prohibits cost-sharing for abortions. We request that the rule clarifies whether the legislature intended to prohibit cost-sharing for services provided from participating and non-participating providers. If cost-sharing is prohibited for abortion services from non-participating providers, then the | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language. |

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| rulemaking should also clarify whether carriers can apply utilization management such as prior authorization.<br>The following language should be inserted:<br>(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. | RCW 48.43.073(1) provides that *"… for health plans issued or renewed on or after January 1, 2024, a health carrier may not impose cost sharing for abortion of a pregnancy."*<br>Under WAC 284-43-7220(5) the proposed rule clarifies that *"[c]overage for abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."*<br>OIC surveyed carriers in the Fall of 2022 and inquired about the application of prior authorization to abortion services. The response OIC received in the aggregate was that prior authorization is not applied to abortion services. |
| We appreciate the definition for "abortion of pregnancy" but need more clarity on which ancillary services associated with abortion must be covered without cost-sharing. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>RCW 48.43.073(1) provides that *"… for health plans issued or renewed on or after January 1, 2024, a health carrier may not impose cost sharing for abortion of a pregnancy."*<br>Under WAC 284-43-7220(4) the proposed rule clarifies that an abortion of a pregnancy includes *"… medical treatment intended to induce termination of a pregnancy, except for the purpose of producing a live birth, and all medically necessary care associated with completing treatment including but not limited to office visits, counseling, diagnostic and laboratory testing, and prescription drugs."* |
| SSB 5396 generally prohibits cost-sharing for supplemental and diagnostic examinations. We request clarification of whether the legislation intended to prohibit cost-sharing for services from participating and non-participating providers. The rulemaking should also clarify whether utilization management like prior authorization may be applied for supplemental and diagnostic breast examinations.<br>The language should explicitly reference "network requirements" and "utilization management" rather than merely explaining that coverage is subject to standard contract provisions. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>The rules provide clarity that "*[c]overage of mammograms may be subject to standard contract provisions, except the cost-sharing provisions prohibited by RCW 48.43.076, which may be applicable to other diagnostic X-ray benefits*." (see WAC 284-44-046(3), 284-46-110(5), and 284-50-270(3)). |
| Thank you for the opportunity to provide feedback. We know that our previous comments will be addressed in the concise explanatory statement but would appreciate guidance in the rulemaking or from OIC directly. | Thank you for your written comments.<br>The Commissioner appreciates these comments but did not make any changes to the rule language. |
| The rules should allow HCBMs to identify a carrier filing by SERFF tracking number and adopt it as their own. Filing in this manner will eliminate duplication and inconsistency. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>The associated legislation created separate statutory duties for HCBMs and carriers to submit their contracts within the scope of the authorities to the Commissioner (RCW 48.43.731 and 48.200.040). Administrative regulations are superseded by state statutes and cannot circumvent or eliminate the statutory duties placed on these entities.<br>There are regulatory benefits achieved by requiring contract submissions from the separate contracting parties. This allows the agency to compare contracts and material terms for compliance. |

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| | Additionally, SERFF filings are meant to be confidential "*... and not subject to public inspection under RCW 48.02.120(2), or public disclosure under chapter 42.56 RCW, if filed in accordance with the procedures for submitting confidential filings through the system for electronic rate and form filings and the general filing instructions as set forth by the commissioner.*" RCW 48.43.731(3) and 48.200.040(3). |
| HCBMs are required to file contracts with carriers by September 21, 2023, but there is no guidance on how HCBMs should file with carriers. We request an extension of the filing deadline until the rules and guidance are in place. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>SB 5066 requires that "*[a] A health care benefit manager must file with the commissioner in the form and manner prescribed by the commissioner, every benefit management contract and contract amendment between the health care benefit manager and a health carrier, provider, pharmacy, pharmacy services administration organization, or other health care benefit manager, entered into directly or indirectly in support of a contract with a carrier or employee benefits programs, within 30 days following the effective date of the contract or contract amendment. Contracts and contract amendments between health care benefit managers and health carriers that were executed prior to July 23, 2023, and remain in force must be filed with the commissioner no later than 60 days following July 23, 2023.*"<br>All filings are made to the Commissioner using the System for Electronic Rate and Form Filings (SERFF). OIC provides additional information and guidance for HCBM and carrier filings on the agency's SERFF website, including specific instructions for HCBM and Carrier filings, (see - https://www.insurance.wa.gov/system-electronic-rate-and-form-filing-serff-guidelines). |
| We appreciate the agency's rulemaking efforts to ensure the legislation is implemented to the full extent authorized by the legislature. It is critical for all cancer patients to have fair and equitable access, without additional barriers, to life-saving breast imaging. | Thank you for your written comments.<br>The Commissioner appreciates these comments but did not make any changes to the rule language. |
| Thank you for preparing and sharing the pre-publication draft. We support the recommendation to allow health carriers to apply the same network structure used for other services, since the underlying laws are silent on out-of-network coverage. We also support the request for clarification regarding which ancillary services must be covered without cost-sharing or if utilization management criteria may be applied. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>RCW 48.43.073(1) provides that *"... for health plans issued or renewed on or after January 1, 2024, a health carrier may not impose cost sharing for abortion of a pregnancy."*<br>Under WAC 284-43-7220(4) the proposed rule clarifies that an abortion of a pregnancy includes *"... medical treatment intended to induce termination of a pregnancy, except for the purpose of producing a live birth, and all medically necessary care associated with completing treatment including but not limited to office visits, counseling, diagnostic and laboratory testing, and prescription drugs."*<br>Additionally, under WAC 284-43-7220(5) the proposed rule provides that *"[c]overage for abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."* |

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| | OIC surveyed carriers in the Fall of 2022 and inquired about the application of prior authorization to abortion services. The response OIC received in the aggregate was that prior authorization is not applied to abortion services. |
| We request explicit language that ensures all abortion associated services are covered without cost-sharing. We also request a prohibition of unnecessary and burdensome medical management techniques or annual restrictions when accessing abortion services.<br>Despite federal and state legislation requiring coverage of contraceptives without cost-sharing, insurers erected financial and logistical barriers to no-cost care and imposed medical management techniques including step-therapy and prior authorization. Hurdles to accessing contraception without cost-sharing still exist today. OIC should learn from past implementation efforts when constructing rules to limit barriers to accessing abortion services. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>RCW 48.43.073(1) provides that *"… for health plans issued or renewed on or after January 1, 2024, a health carrier may <u>not</u> impose cost sharing for abortion of a pregnancy."*<br>Under WAC 284-43-7220(4) the proposed rule clarifies that an abortion of a pregnancy includes *"… medical treatment intended to induce termination of a pregnancy, except for the purpose of producing a live birth, and all medically necessary care associated with completing treatment including but not limited to office visits, counseling, diagnostic and laboratory testing, and prescription drugs."*<br>Additionally, under WAC 284-43-7220(5) the proposed rule outlines that *"[c]overage for abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."*<br>OIC surveyed carriers in the Fall of 2022 and inquired about the application of prior authorization to abortion services. The response OIC received in the aggregate was that prior authorization is not applied to abortion services. |
| We request a prohibition of prior authorization in the final rule and for coverage not to contain quantity limits for covered abortion care. For example, a carrier may not restrict a patient to one abortion a year without cost-sharing. Delays in access to abortion services limit reproductive autonomy and increases the cost and risks to the patient for a time-sensitive procedure. OIC should strive to maximize timely access to critical services and make the process of accessing these services simple and consumer friendly. | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>RCW 48.43.073(1) provides that *"… for health plans issued or renewed on or after January 1, 2024, a health carrier may <u>not</u> impose cost sharing for abortion of a pregnancy."*<br>Under WAC 284-43-7220(4), the proposed rule clarifies that an abortion of a pregnancy includes "*medical treatment intended to induce termination of a pregnancy, except for the purpose of producing a live birth, and <u>all medically necessary care</u> associated with completing treatment including but not limited to office visits, counseling, diagnostic and laboratory testing, and prescription drugs*."<br>Additionally, under WAC 284-43-7220(5) the rule outlines *"[c]overage for abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."*<br>OIC surveyed carriers in the Fall of 2022 and inquired about the application of prior authorization to abortion services. The response OIC received in the aggregate was that prior authorization is not applied to abortion services. |
| We recommend that the list of abortion services also include associated counseling, supplies, and follow-up services. Being explicit as possible will ensure that the coverage is patient centric, without gaps, and determined by an individual's provider. Patients should not pay out-of-pocket for services | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language. |

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| provided in conjunction with an abortion, especially when associated diagnostics are just as if not more costly than the medication of procedure itself.<br>No cost-sharing for abortion and all related services is also consistent with the standards and requirements established under Reproductive Parity Act and the Affordable Care Act. | RCW 48.43.073(1) provides that *"… for health plans issued or renewed on or after January 1, 2024, a health carrier may <u>not</u> impose cost sharing for abortion of a pregnancy."*<br>Under WAC 284-43-7220(4), the proposed rule clarifies that an abortion of a pregnancy includes "*medical treatment intended to induce termination of a pregnancy, except for the purpose of producing a live birth, and <u>all medically necessary care</u> associated with completing treatment including but not limited to office visits, counseling, diagnostic and laboratory testing, and prescription drugs*."<br>Additionally, under WAC 284-43-7220(5) the rule provides *"[c]overage for abortion of a pregnancy may be subject to terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."* |
| **CR-102 (Proposed Rule Making)** | |
| The underlying law is silent regarding network coverage for hearing instruments and requires the health plan to provide coverage. Not all health plans offered in Washington include an out-of-network coverage for medical services. These plans require enrollees to access non-emergency services from in-network providers. This is a health plan design that helps contain costs of medical services, which helps lower the premium for the plan. Rates for the 2024 plan year did not contemplate that the regulation implementing RCW 48.43.135 would expand the scope of coverage beyond the legislative intent. We urge the OIC to permit health carriers to apply the same network structure used for other services covered by the health plan to the benefit design for hearing instrument coverage. | Thank you for your written comments. The Commissioner considered these comments and made the following changes to the rule:<br>WAC 284-43-5937(1) has been revised to no longer require hearing instrument coverage regardless of network status. This subsection of the rule language has been revised as follows:<br>*"(1) The purpose of this regulation is to effectuate the provisions of chapter 245, Laws of 2023, by requiring health carriers to include coverage for hearing instruments ~~regardless of network status~~."*<br>WAC 284-43-5937(4) has been updated to clarify that health carriers shall provide in network coverage for hearing instruments, as follows:<br>*"(4) Health carriers shall provide <u>in network</u> coverage for hearing instruments at no less than $3,000 per ear with hearing loss every 36 months."* |
| E2SHB 1222, codified as RCW 48.43.135, does not distinguish between coverage requirements for hearing instruments and services received from participating versus non-participating providers. We kindly request that the rules confirm carriers may apply normal plan designs with respect to network structure when covering the benefit. For instance, if a health plan lacks out-of-network benefits for other services, this structure should be consistently applied to the hearing instrument benefit as well. | Thank you for your written comments. The Commissioner considered these comments and made the following changes to the rule:<br>WAC 284-43-5937(1) has been revised to no longer require hearing instrument coverage regardless of network status. This subsection of the rule language has been revised as follows:<br>*"(1) The purpose of this regulation is to effectuate the provisions of chapter 245, Laws of 2023, by requiring health carriers to include coverage for hearing instruments ~~regardless of network status~~."*<br>WAC 284-43-5937(4) has been updated to clarify that health carriers shall provide in network coverage for hearing instruments, as follows:<br>*"(4) Health carriers shall provide <u>in network</u> coverage for hearing instruments at no less than $3,000 per ear with hearing loss every 36 months."* |
| We deeply appreciate the clarification that the prohibition on cost-sharing extends to all services related to and provided in conjunction with an abortion, including "health services associated with completing the treatment, including but not limited to office visits, counseling, diagnostic and laboratory | Thank you for your written comments. The Commissioner considered these comments and made no changes to the rule language.<br>Under WAC 284-43-7220(5) the proposed rule clarifies that *"[c]overage for abortion of a pregnancy may be subject to* |

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| testing, and prescription drugs." To ensure seamless coverage, we reiterate our request that regulations implementing SB 5242 prohibit utilization review techniques and annual limitations when accessing abortion services. We recommend that the regulation explicitly prohibit insurers from employing unnecessary and burdensome utilization review techniques or annual restrictions when covering no-cost abortion care. | *terms and conditions generally applicable to the health plan's or student health plan's coverage of maternity care or services."*<br>OIC surveyed carriers in the Fall of 2022 and inquired about the application of prior authorization to abortion services. The response OIC received in the aggregate was that prior authorization is not applied to abortion services. |
| **Public Hearing** | |
| No testimony or comments provided at public hearing. | |

# Section 6: Implementation Plan

**A. Implementation and enforcement of the rule.**

After the permanent rule is adopted and filed with the Office of the Code Reviser:

- Policy staff will distribute copies of the final rule and the CES to all interested parties through the State's GovDelivery electronic mail system.
- The CR-103 documents and adopted rule will be posted on the OIC's website.

Questions about the new regulations will be addressed by OIC staff as follows:

| Type of Inquiry | Division |
|---|---|
| **Consumer assistance** | Consumer Protection |
| **Rule content** | Legal Affairs |
| **Authority for rules** | Policy |
| **Enforcement of rule** | Company Supervision |
| **Market Compliance** | Company Supervision |

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

The agency will answer inquiries, hold meetings, and provide assistance to all affected parties including but not limited to insurers, producers, consumers, or other regulators.

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

Policy staff will distribute copies of the final rule and the CES to all interested parties through the State's GovDelivery electronic mail system.

The CR 103 documents and adopted rule will be posted on the OIC's website.

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

The Insurance Commissioner will monitor the frequency and impact of consumer complaints, investigations, and enforcement actions to evaluate whether the rules achieve their purpose.

**Appendix A**

**CR-102 Hearing Summary**

## Summarizing Memorandum

**To: Mike Kreidler**
**Insurance Commissioner**

**From: Sr. Policy Analyst, Michael Walker, and Health Policy Analyst Delika Steele**

**Presiding Officials, Hearing on Rule-making**

**Matter No. R 2023-07**

**Topic of Rule-making: Consolidated Health Care**

This memorandum summarizes the hearing on the above-named rule making, held on Tuesday, November 21, 2023, at 9:00 AM, virtually via Zoom Meetings, over which I presided in your stead.

The following agency personnel were present:
Delika Steele, Policy Analyst (Health Focus)
Wendy Conway, Sr. Health Forms Compliance Analyst (FPA 4)
Julia Hinrichs, Sr. Health Forms Compliance Analyst (FPA 4)
Jennifer Kreitler, Provider Network Oversight Program Manager
Lichiou Lee, Actuary 4
Lindsey Robles, HCBM Forms Analyst (FPA 4)
Stephanie Marquis, Public Affairs Director
Sharon Daniel, Functional Program Analyst 4 (FPA 4)
Max Spears, Functional Program Analyst 3 (FPA 3)
Vince Watson, Market Conduct Oversight Manager
Kim Tocco, Attorney Manager

**In attendance and testifying:**
No testimony or comments were provided at the public hearing.

**Contents of the presentations made at hearing:** None.

**The hearing was adjourned.**

*SIGNED this 21st day of November 2023*

Michael S. Walker

*Michael Walker, Presiding Official*