



July 26, 2024

Nico Janssen & Jane Beyer
Policy & Legislative Affairs Division
Washington Office of the Insurance Commissioner
P.O. Box 40260
Olympia, WA 98504-0260
Submitted via email to: rulescoordinator@oic.wa.gov

Re: Comments relating to health care benefit managers (R 2024-02)

Dear Mr. Janssen & Ms. Beyer,

On behalf of the Association of Washington Healthcare Plans (AWHP), we appreciate the opportunity to review and provide feedback on the CR-102 concerning the rulemaking for Health Care Benefit Managers (HCBMs). Implementing the new regulatory framework for HCBMs has been a challenging and complex process for both health carriers and their HCBM partners. We appreciate the Office of the Insurance Commissioner's (OIC) commitment to refining these regulations by revisiting them and engaging stakeholders.

OIC's prepublication draft for R 2024-02 imposes new filing obligations on carriers that are not consistent with the statutes governing HCBM activity in Washington. The legislature created a bifurcated filing process that does not contemplate overlapping filings by carriers and HCBMs for agreements held between two HCBMs. Carriers are obligated to file agreements "between the carrier and any health care benefit manager registered under RCW 48.200.030." RCW 48.43.731(1). HCBMs are required to file "every benefit management contract and amendment between the health care benefit manager and a health carrier, provider, pharmacy, pharmacy services administrative organization, or other health care benefit manager, entered directly or indirectly in support of a contract with a carrier or employee benefits program." RCW 48.200.040(2). OIC's proposed revisions to WAC 284-180-455 would require a carrier to file all agreements to directly or indirectly provide HCBM services, even if the carrier is not a party to that agreement. Both statutes were passed during the 2020 Regular Session and had the legislature intended for a carrier to file all HCBM agreements, even if the carrier is not a party to those agreements, it could have used language similar to the language cited above in RCW 48.200.040.

While the proposed new filing requirement lacks explicit statutory support, the need for carriers to file agreements between two HCBMs seems redundant. OIC has previously expressed concerns about ensuring consistency in HCBM agreements, which led to modifications to RCW 48.200.040 effective July 23, 2023, requiring HCBMs to file the agreements they hold with carriers. This change allows OIC to identify any inconsistencies in HCBM agreements filed by carriers. However, such concerns do not appear to apply to agreements between two HCBMs given existing filing obligations in 48.200.040. If there are concerns about carriers' accountability for HCBMs not directly contracted with them, AWHP believes that existing regulations, specifically 48.200.050, already hold carriers accountable. The proposed revisions impose unnecessary administrative burdens and costs on carriers. AWHP respectfully requests the proposed revisions to WAC 284-180-455 be removed from the final rule.

Moreover, AWHP is concerned about the OIC's broad interpretation of the term "indirectly" in the definition of HCBM under RCW 48.200.020 arising out of TAA 2024-01 published on April 16, 2024. As previously submitted, this interpretation is crucial, and we request that the OIC engage in formal rulemaking to clearly define "directly" and "indirectly," incorporating feedback from carriers into the process. When an insurer retains ultimate decision-making authority, the receipt of data, services, or information from a vendor does not necessarily "impact" the determination or utilization of benefits or access to care. Data and insights gained from vendor services are used by carriers to make independent decisions. We urge the OIC to align HCBM regulations with the legislative intent and avoid expanding the scope of HCBM requirements unnecessarily. We believe that registering and overseeing every software and data provider may not enhance consumer protection. The draft rule language below integrates the legislative intent into the regulation and offers carriers a clearer standard for determining whether a third-party vendor is an HCBM: WAC 284-180-120

(1) This chapter applies to health care benefit managers as defined in RCW 48.200.020.
(a) This chapter does not apply to persons or entities providing services to, or acting on behalf of, a health carrier or employee benefits programs without authority to exercise broad discretion to affect the determination or utilization of benefits for, or patient access to, health care services, drugs, and supplies or when the health carrier or employee benefit program retains sole decision-making authority.

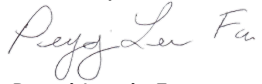
(2) This chapter does not apply to the actions of health care benefit managers providing services to, or acting on behalf of:
(a) Self-insured health plans;
(b) Medicare plans;
(c) Medicaid; and
(d) Union plans.

Additionally, as previously submitted, we recommend that the OIC use this rulemaking opportunity to incorporate the following clarifications that have been provided throughout the implementation process:

- Update WAC 284-180-210(2) to clarify that the chapter does not apply to the actions of HCBMs providing services to or acting on behalf of Medicare Advantage health plans.
- Update WAC 284-180-210(2) to clarify that the chapter applies to standalone dental and vision plans.
- The definition of HCBM under RCW 48.200.020 includes an exception for insurers. However, there was confusion about whether an insurer performing HCBM functions for another entity must also register as an HCBM. We recommend clarifying that insurers are not required to register as an HCBM if they are a Washington State licensed insurance company, even if performing HCBM functions for another insurance entity in the regulation for the future. This clarification is important because, as a licensed insurer in Washington, the OIC already has regulatory oversight.

We appreciate your consideration of our comments and our continued collaboration as the OIC works on this rulemaking project. Please do not hesitate to contact me with any questions or to discuss further.

Sincerely,

A handwritten signature in cursive script that reads "Peggi Lewis Fu".

Peggi Lewis Fu
Executive Director
Association of Washington Healthcare Plans