



September 16, 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 the second prepublication draft of 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 second prepublication draft concerning the rulemaking for Health Care Benefit Managers (HCBMs). The implementation of the regulatory framework for HCBMs has presented some ongoing challenges, and we acknowledge the OIC's efforts to engage stakeholders and revisit these regulations.

We would like to express our appreciation for the inclusion of the option allowing carriers to provide a list of all HCBM contracts as an alternative to filing all indirect HCBM contracts. This approach is a helpful step toward reducing duplicative efforts and maintaining clarity in the submission process. The ability to reference such contracts through a consolidated list streamlines the regulatory requirements and helps ensure compliance in a more manageable way. We acknowledge the general feedback shared during stakeholder discussions that emphasized the importance of alternatives to the repetitive filing of individual contracts, and we appreciate that this was taken into account.

However, we still respectfully raise concerns regarding the draft rule's new filing obligations, which appear to introduce redundant requirements for carriers. 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). 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. It is still our strong preference that OIC remove the proposed language in WAC 284-180-455(1)(b), provided it would be redundant to the HCBM filing requirements proposed in WAC 284-180-460(1).

Additionally, AWHP remains 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. Without regulatory interpretation of the definition of HCBM, the industry has struggled to implement

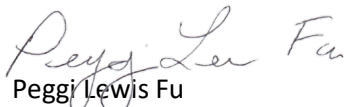
the requirements and has requested further guidance from the OIC on several occasions. To incorporate carrier feedback into the process, we recommend the draft rule language below. This simple addition will offer carriers a clearer standard for determining whether a third-party vendor is a HCBM. Our goal with the language is to align regulation with the legislative intent, which was to provide regulatory oversight on HCBMs with broad discretion to make health care decisions on behalf of carriers. 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.

We greatly appreciate the OIC's ongoing work on this important rulemaking project and value the opportunity to contribute to the refinement of these regulations. We hope that our comments will assist in making the process more efficient and aligned with the legislative framework. Please feel free to reach out if further discussion or clarification is needed.

Sincerely,



Peggi Lewis Fu
Executive Director

Association of Washington Healthcare Plans