



September 16, 2024
Cigna Healthcare
500 Great Circle Rd.
37228 Nashville
USA

Nico Janssen
Jane Beyer
Washington Office of the Insurance Commissioner
302 Sid Snyder Ave
Olympia, WA 98501

Submitted electronically to the rules coordinator

Re: Health Care Benefit Managers CR-102 (R 2024-02)

Dear Mr. Janssen and Ms. Beyer,

I write on behalf of Cigna Health and Life Insurance Company ("Cigna Healthcare") regarding the Office of Insurance Commissioner's (OIC's) second prepublication draft of the proposed revisions to the health care benefit manager (HCBM) regulations. The following comments build upon the previous concerns raised in our letter dated July 26, 2024, a copy of which is attached for your reference.

Proposed regulation remains unsupported in statute and blurs the clearly delineated contract filing boundaries separating carriers and HCBMs.

Cigna Healthcare remains concerned with the new language proposed in WAC 284-180-455(b)(i) that requires carriers to file all contracts to provide health care benefit manager services on behalf of a carrier, particularly when a health care benefit manager subcontracts with another health care benefit manager. As noted in our previous letter, the legislature created separate and distinct filing requirements for carriers and HCBMs. Carriers have no obligation in the current statutory framework to file agreements between two HCBMs, as those filing obligations are solely the responsibility of the HCBMs. There is no ambiguity in the law in terms of where carrier contract filing obligations end and where HCBM filing obligations begin, yet OIC's proposed rules blatantly ignore the legislature's intent.

OIC's attempt to justify this duplicative filing obligation under RCW 48.200.050(5) fails to pass muster when reading the plain language of the statute. Subsection (5)(a) states, "[h]ealth carriers and employee benefits programs are responsible for the compliance of any person or organization acting directly or indirectly on behalf of or at the direction of the carrier or program, or acting pursuant to carrier or program standards or requirements concerning the coverage of, payment for, or provision of health care benefits, services, drugs, and supplies." provides no obligation on a carrier to assume the responsibilities of an HCBM with respect to contract filings. The modifier phrase "concerning the coverage of, payment for, or provision of health care benefits, services, drugs, and supplies" equally applies to 1) "any person or organization acting directly or indirectly on behalf of or at the direction of the carrier or program," and 2) any person or entity "acting pursuant to carrier or program standards or requirements." *Id.* Nowhere within the statute are carriers obligated to perform the statutory contract filing obligations of an HCBM on the HCBM's behalf. As a result, a carrier's obligation to ensure compliance is much more limited than the broad interpretation OIC applies in its effort to substantiate the latest contract filing requirement upon carriers.

Take for example a carrier who contracts with HCBM A to perform utilization management, claims pricing and processing, and appeals on its behalf. HCBM A then subcontracts with HCBM B to perform claims processing on its behalf in support of a carrier's health benefit plan. It is the carrier's responsibility to ensure that HCBM A and HCBM B are performing the contracted functions consistent with WA law, and to the extent either HCBM A or HCBM B fail to adhere to the state law



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standards for those contracted functions, both the HCBM and carrier can be held responsible for those failures. Furthermore, if a carrier determined that either HCBM A or HCBM B could not compliantly perform one or more of the contracted functions, it would be the carrier's responsibility to either place the HCBM under a corrective action plan or assume the responsibilities via termination of the subcontracting arrangement to ensure that prior authorizations, claims, and/or appeals are handled timely and otherwise in accordance with state law. OIC could take action on all of these failings since they fall within the scope of "coverage of, payment for, or provision of health care benefits, services, drugs, and supplies." However, OIC cannot force a carrier to file an agreement between two HCBMs, as contract filing is a purely administrative obligation that has no relation to the aforementioned functions.

The above statutory interpretation is reinforced by reviewing subsection (5)(b), which states, "[a] carrier or program contracting with a health care benefit manager is responsible for the health care benefit manager's violations of this chapter, including a health care benefit manager's failure to produce records requested or required by the commissioner." *Id.* Responsibility for violations of the chapter is much more expansive than the limited compliance responsibilities described in subsection (a). Had the legislature intended for carriers to file agreements executed exclusively between two HCBMs, they would have done so by expressly stating as much in RCW 48.43.731 or by stating that carriers are responsible for an HCBMs compliance with all requirements of the chapter. Neither of those are present, yet OIC is conflating these separate contract filing obligations to create a new contract filing framework that simply does not exist within existing statutes.

In light of the issues cited above and in our previous letter, Cigna respectfully requests that OIC heed the intent of the legislature and remove WAC 284-170-455 subsection (b)(i) prior to issuing the CR-103 rulemaking order. Thank you for the opportunity to provide comments on the proposed regulations. Should you have any questions, please do not hesitate to contact me.

Best Regards,

Glenn Zuercher

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Enclosure: July 26, 2024 Cigna Healthcare CR-102 Letter



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Re: Health Care Benefit Managers CR-102 (R 2024-02)

Dear Mr. Janssen and Ms. Beyer,

I write on behalf of Cigna Health and Life Insurance Company ("Cigna Healthcare") regarding the Office of Insurance Commissioner's (OIC's) proposed revisions to the health care benefit manager (HCBM) regulations. Cigna Healthcare appreciates the efforts OIC is making to provide further clarity to carriers regarding the HCBM framework and for the opportunity to engage in the rulemaking process.

Insurers and HCBMs have different filing obligations

Upon its enactment in the 2020 Regular Session, SSB 5601 created a Health Care Benefit Manager chapter (§ 48.200.010 et. seq.) under Title 48 to establish standards for regulatory oversight of HCBMs effective January 1, 2022. Under RCW § 48.200.040, extensive HCBM contract filing obligations were codified.

In contrast, SSB 5601 established parallel, but much more limited contract filing obligations on carriers under the Insurance Reform chapter at RCW § 48.43.731.

A review of these statutes, along with the authority granted to the OIC in connection with each statute, reveals a split contract filing system and a dichotomy of rulemaking standards. Importantly, OIC's expansion of the contract filing requirements imposed on carriers in WAC § 284-180-455 is concerning and does not appear to align with the underlying statutes governing HCBMs and carriers.

HCBMs have more extensive contract filing obligations than carriers.

Before the passage of SB 5066 in 2023, HCBMs were obligated to file "every benefit management contract and contract amendment between the health care benefit manager and a 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." RCW § 48.200.040(2). SB 5066 expanded the scope of that filing obligation to include agreements between the health care benefit manager and a health carrier. *Id.*

At this time, we do not question OIC's authority to expand WAC § 284-180-460 to require HCBMs to file all HCBM agreements that directly or indirectly provide HCBM services, as RCW § 48.200.900 grants OIC the authority to establish "any rules necessary to implement this act." However, we do not agree that similar contract filing obligations can be imposed on carriers merely through rulemaking, particularly since chapter 48.200 contains no contract filing obligation for carriers; and carriers are only obligated to file "every contract and contract amendment between the carrier and any health care benefit manager registered under RCW § 48.200.030." RCW § 48.43.731(1) (emphasis added).

The latest proposed revision to WAC § 284-180-455 is unsupported in statute and blurs the clearly delineated contract filing boundaries separating carriers and HCBMs.

If the proposed rules in subsection (1) of WAC § 284-180-455 remain unchanged, carrier obligations will be significantly expanded beyond what the legislature contemplated by requiring carriers to file “all contracts to directly or indirectly provide health care benefit management services on behalf of a carriers, such as but not limited to, health care benefit management services contracts that result from a carrier contracting with a health care benefit manager who then contracts or subcontracts with another health care benefit manager.”

An agreement between an HCBM and another HCBM (a “downstream HCBM contract”) is not an agreement between a carrier and an HCBM. The legislature did not include in RCW § 48.43.731 similar language to RCW § 48.200.040 regarding agreements entered into directly or indirectly in support of a carrier or employee benefits program. The legislature clearly limited carrier filing obligations to agreements in which the carrier is a party by requiring the agreement to be between a carrier and an HCBM. Put differently, the legislature intended to impose different filing requirements on carriers and HCBMs.

Any rules created pursuant to this statute are not subject to the expansive authority granted under RCW § 48.200.900, but are instead governed by RCW § 48.02.060 which establishes that the commissioner may “make reasonable rules for effectuating any provision of this code.” RCW § 48.02.060(3)(a). Given the clear limitations on carrier filing obligations, it does not appear reasonable to extend carrier filing obligations beyond what the legislature intended and Cigna Healthcare respectfully requests that OIC limit the filing carrier filing obligations to agreements between the carrier and an HCBM.

The Proposed Rules would add costs and administrative burdens to carriers, HCBMs, and the OIC with little benefit in return.

Requiring carriers to file downstream HCBM contracts also imposes unnecessary financial costs and avoidable administrative burdens on carriers, their contracted HCBMs, and even the OIC. HCBMs are already required to file agreements with another HCBM, and layering on a *third* filing requirement for carriers does not appear to accomplish much.

Moreover, the proposed rule would subject carriers to enforcement action by OIC if an amendment to an agreement in which the carrier is not a party is amended and either one of the HCBMs fails to notify the carrier of the amendment. Similarly, if OIC is concerned about enforcement actions against carriers for non-compliance by a downstream HCBM, RCW § 48.200.050(5)(a)-(b) already holds carriers accountable for the actions of persons and HCBMs acting directly or indirectly on behalf of the carrier.

If OIC is concerned about transparency in terms of the downstream HCBMs performing services on behalf of a carrier, that can be addressed through revisions to carrier websites as contemplated by OIC’s proposed edits to WAC § 284-180-325(2) without creating duplicative contracting filing obligations upon carriers. OIC has also communicated to carriers on multiple occasions that the revisions to RCW § 48.200.040 effective July 23, 2023 were necessary to ensure that there were not inconsistencies with HCBM agreements filed by carriers. A third contract filing by carriers will not aid OIC in identifying inconsistencies in filed agreements since those concerns can already be vetted through the filings by the respective HCBMs.

Without any compelling policy reasons to impose downstream HCBM contract filing obligations on carriers, it would be prudent to align contract filing obligations consistent with the statutory framework in place today.



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