

To whom it may concern,

The following are my written comments on CR-102, Insurance Commissioner matter R 2024-02 relating to Health Care Benefit Managers.

My name is Clinton Knight, I am a pharmacist and own and operate an independent pharmacy here in Washington State. I have been very active and involved in trying to utilize the OIC's small pharmacy appeals process since it was instated in 2017. I have submitted and won hundreds of underpayment appeals over the years and was the pharmacist responsible for the appeals that finally resulted in the OIC issuing civil penalties to PBMs in 2021. Thank you for your consideration of my suggestions in the following. If you have any questions or would like clarification on anything I have presented please contact me directly, my contact information is included at the end of this document.

I have multiple concerns about the proposed rule and have previously issued written statements that address most of them. Please revisit my written statements from previous hearings on this subject, I have included them here.

There are 2 aspects of the current proposed rule that I take serious concern in and ask that you seriously reconsider and revise them to align with the intent of the law. The 2 biggest issues I find are WAC 284-180-505 where the OIC has imposed a 90 day time limit to when a claim is adjudicated to when the appeal must be filed and WAC 284-180-505(6) where the OIC has basically defined the term "reasonable adjustment" to be "the net amount paid by the pharmacy to the supplier of the drug."

WAC 284-180-505 where the OIC has imposed a 90 day time limit to when a claim is adjudicated to when the appeal must be filed. The original law has no such time limit. Many of the PBMs have tried to impose a time limit of their own through their 1<sup>st</sup> tier appeal processes, but I have challenged this within the OIC and OAH hearings process and the hearings officer has found in my favor in every case and affirmed the fact that the intent of the law has no time limit. You can review all the 2<sup>nd</sup> tier appeals by Whole Health Pharmacy in the system and see the evidence of this on multiple occasions. The first judgement of this came when the hearings were still originally held within the OIC and the order number is 20-0002. I believe this was with Downtown Pharmacy a pharmacy I was an employee of at the time that has since gone out of business due to the predatory business practices of the PBMs. I affirm that the original legislation has no such time limit nor should the OIC implement rule to impose a time limit of any kind, but if you must, 90 days would be much too short and impose immense hardships on small pharmacies that would not be able to keep up with this burdensome process. If a time limit must be imposed, I would argue that it should at least be congruent with the time frame the PBMs have to audit pharmacy claims which is 24 months. On page 10 of 11 of the OIC economic impact statement the OIC writes, " the second prepublication draft contemplated allowing pharmacies to use a lookback period of 24 months after a claim is adjudicated to appeal the drug reimbursement. OIC revised this lookback period to 90 days, which may lessen the impact of appeals on PBMs." This highlighted statement is downright offensive. The PBMs can lessen the impact of appeals by stopping their predatory business practices and start reimbursing at a fair rate so appeals would not need to exist. The reason this legislation was necessary is due to the PBMs predatory business practices and for OIC, the governing body charged with implementing the law, to be concerned with the impact appeals may have on the violators of our law is a dereliction of duty. In the 1<sup>st</sup> 5 months of 2024 my pharmacy has been underpaid by PBMs on 8,697 claims. The intent of the law was to lessen the impact of this on pharmacies and the people of our state that are affected by the high medication prices in this nation.

WAC 284-180-505(6) where the OIC has basically defined the term “reasonable adjustment” to be “the net amount paid by the pharmacy to the supplier of the drug.” Up until now the OIC and the law has offered no definition of the term “reasonable adjustment” where it pertains to the reimbursement the PBMs must pay to pharmacies. The new verbiage in the proposed rule reads “A reasonable adjustment must include, at minimum, payment of the claim or claims at issue at the net amount paid by the pharmacy to the supplier of the drug.” This is putting into rule that a PBM must only pay a pharmacy at net zero for the drug dispensed, this absolutely under no circumstance is a reasonable adjustment. Everyone can agree that a business cannot sustain at net zero reimbursement. There are at least costs for materials that must be accounted for, medication vials and labels, and the overhead of facilities and staffing. Not to mention every prescription must be reviewed by a pharmacist before it is dispensed to a patient. It is actually quite offensive that the OIC has taking this stance with this writing that the services a pharmacist and pharmacy provides has absolutely no worth. There are many studies and metrics available that report the average cost to dispense a prescription. I ask the OIC at least take these costs into account and build them into the language of the rule. I have personally had conversations with our new Insurance Commissioner elect, Patty Kuderer, and she has expressed to me that she does value pharmacy and pharmacists the work we do and the impact we have on peoples health. I am sure Miss Kuderer understands that any business cannot sustain at net zero reimbursement. It would be better if the OIC remains silent on the definition of reasonable adjustment and allows me to continue to plead my case with hearings officers. Furthermore, under the section of the law for Relief the Commissioner my provide, the law states the commissioner or presiding officer may take multiple actions “deemed fair and equitable”. Net zero reimbursement is not fair and equitable.

Thank you for your time and consideration,

Clinton Knight, Doctor of Pharmacy

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