



September 15, 2020

Mandy Weeks-Green, Senior Health Policy Analyst
Washington Office of the Insurance Commissioner
P.O. Box 40260
Olympia, WA 98504-0260
Submitted via email to: rulescoordinator@oic.wa.gov

Re: Comments on Health Care Benefit Managers Stakeholder Draft (R 2020-04)

Dear Ms. Weeks-Green:

On behalf of the Association of Washington Healthcare Plans (AWHP), we would like to offer the following comments on the Office of the Insurance Commissioner's (OIC) stakeholder draft for the Health Care Benefit Managers (HCBM) rulemaking (R 2020-04). We appreciate the OIC beginning the stakeholder process well in advance of the 2022 effective date of the underlying legislation, as we understand implementing this new regulatory structure will be complex.

WAC 284-180-130 Definitions

The OIC has added a definition for "Health care benefit manager" that cites back to the statutory definition found at RCW 48.200.020. The statute defines a HCBM as "a person or entity providing services to, or acting on behalf of, a health carrier or employee benefits programs, that directly or **indirectly** impacts the determination or utilization of benefits for, or patient access to, health care services, drugs, and supplies . . ." (emphasis added). We urge the OIC to take this opportunity in the rulemaking to further clarify what is meant by a person or entity that indirectly impacts the determination or utilization of benefits or access to services, drugs and supplies. This broad language could seemingly apply to numerous vendors who contract with health carriers but play no material role in impacting enrollee benefits or access to care. We believe the legislative intent was to capture those entities that materially impact patient benefits or care, and this was further confirmed by Senator Short during the stakeholder meeting held on September 9, 2020.

We recommend incorporating the full statutory definition of HCBM and then including language describing what entities or individuals would not qualify as a HCBM. For example, the regulation could specifically mention the following would not be considered HCBMs: employees of a health carrier; entities that transmit data to a health carrier without any analysis or decision-making that impacts patient benefits or access to care; entities that license software to a health carrier (such as claims repricing software); credentialing entities; and entities that do not make determinations impacting enrollee benefits or access to care.

Furthermore, we understand the OIC provided information for the legislature's fiscal note on the underlying legislation whereby the OIC projected "a total of 550 HCBM will seek licenses with the OIC – 400 in FY2022, 100 in FY2023 and 50 in FY2024 [and] assume the number will then

hold steady at 550 licensees per year.” It might be helpful if the OIC could provide a list of the entities it considered when supplying information for the fiscal note. This could shed further light on which entities carriers should classify as HCBMs.

WAC 284-180-220 Health Care Benefit Manager Registration

The language in this section establishing the timelines for registration are unclear. It appears that if a HCBM newly registers on January 1, 2022, their registration may only be valid until June 30th of that year. We suggest the OIC clarify this language to account for the first year of a HCBM’s registration. Additionally, the language in section (5) could also adversely impact HCBMs registering in their initial year, since many of these entities are already operating in the state and the language could be seen as preventing them from operating while they complete their registration.

The proposed section removes the current requirements for PBM registration, which means that there will be a full year where PBMs are not required to register before these rules take effect. If that is not the intent, we suggest including language that retains the PBM registration requirements through 2021.

WAC 284-180-240 Providing and Updating Registration Information

Section (1)(b) requires a HCBM to provide at the time of registration “[o]ther business licenses that the [HCBM] has held and those that are active.” It would be helpful if the OIC could provide examples of other types of business licenses of which they would like to be informed. Additionally, section (4)(b) requires a HCBM to notify the OIC of any material change in the information provided during registration. It is not clear what would constitute a “material change” in this circumstance, further guidance would be appreciated.

WAC 284-180-310 Health Care Benefit Manager Records

Section (1)(a) requires HCBMs to retain records of each transaction completed. It is unclear what is meant by “transaction” in this context and additional guidance would be helpful. Additionally, we suggest amending the language in section (4) to state:

(4) When the commissioner requests copies of records for inspection, health care benefit managers pharmacy benefit managers must transmit these documents as directed by the commissioner to the commissioner electronically **in accordance with applicable federal and state laws.**

WAC 284-180-330 Required Notices

Overall, we appreciate the OIC’s thoughtfulness in this section and believe these requirements are reasonable. However, we have concerns with the requirements in section (1) to update carrier websites within three business days of any change to the HCBM information. We don’t believe a three-day turn-around time provides much value to enrollees, as we do not anticipate enrollees relying heavily on this information. Instead we suggest permitting the carrier to update this information monthly, similar to what is required for provider directory updates. We offer the following language:

(1) Carriers must post on their website information that identifies each health care benefit manager contracted with the carrier and identify the services provided by the benefit manager. The information must be easy to find on the carriers website with a link from the webpage utilized for enrollees. The carrier is required to update the information

on their website monthly with updates within three business days of any change, such as the addition or removal of a benefit manager or a change in the services provided by a benefit manager.

WAC 284-180-455 Carrier Filings Related to Health Care Benefit Managers

It appears the OIC has borrowed the language in section (5) from current requirements applicable to health carrier provider contract filings. We don't believe the requirement to include provider network names is applicable or relevant in the context of HCBMs and we suggest removing section (5).

WAC 284-180-455 Health Care Benefit Manager Filings

Section (1) requires a HCBM to file all contracts and contract amendments "entered into directly or **indirectly** in support of a contract with a carrier or employee benefits program . . ." (emphasis added). Similar to our comments above, we have concerns with the broad nature of this language that could seemingly require a HCBM to file numerous immaterial contracts. We recommend the OIC provide clarity similar to our suggestion above.

Also, as mentioned in our comments above, we recommend removing section (3) as the requirement to include provider network name in HCBM contracts is neither applicable nor relevant, as it would be in health carrier provider contract filings.

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

Sincerely,

Chris Bandoli
Executive Director