December 9, 2020

Mandy Weeks-Green
Washington State Office of the Insurance Commissioner
PO Box 40260
Olympia, WA 98504-2060

RE: Washington State Pharmacy Association comments on CR 102 Health Care Benefit Managers

Dear Ms. Weeks-Green:

I am writing on behalf of the Washington State Pharmacy Association (WSPA) to provide comments and suggested changes and additions to CR 102 health care benefit managers. The CR 102 adds new language to the Small Pharmacy Reimbursement Appeals process that we would like to provide comment on and provide suggested changes we believe strengthens the process.

WAC 284-180-110 – Purpose

1) The word "*regulation*" has been removed.

WSPA comment: We would like to see the word regulation remain. The rule mentions regulation throughout and we believe it is important to have regulation included in the Purpose.

WAC 284-180-120 Applicability and scope

(2)(a) Self-insured health plans
(2)(c) Union plans;

WSPA comment: We would like to request the OIC define Union and Self-insured health plans. All too often Pharmacy Benefit Managers (PBMs) claims a prescription plan falls under ERISA or Taft-Hartley when that may not be the case. (Examples and OIC appeal case #'s upon request)

Does the OIC have a process in which they can identify the applicability of the law?

Does the OIC have a process in which they can verify if a plan falls into one of the above categories?

Since the above limitations are placed on the Pharmacy, can the OIC develop a system where a pharmacy can identify if a plan is a self-insured or a union plan before submitting an appeal?

WAC 284-180-230 Health care benefit manager renewal

Technical suggestion to Sub. 2 It Looks like a c) needs to be added to the below provision

On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the upcoming fiscal year for July 1st through June 30th.

WSPA comment: It is currently a standalone provision in the CR 102 it is a standalone sentence.

WAC 284-180-400 Appeals by network pharmacies to health care benefit managers who provide pharmacy benefit management services

Sub. 5) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial and the national drug code of a drug that is available to the appealing pharmacy at a price that is less than or equal to the predetermined reimbursement cost for the multisource generic drug. "Multisource generic drug" is defining RCW 19.340.100 (1)(c)

WSPA comments: The words "available to the appealing pharmacy" mean that the appealing pharmacy does not have to purchase the lower priced drug if the purchase may involve, but is not limited to, the following circumstances where higher fees or other financial risks are incurred:

- A short-dated drug for sale at a lesser price but which the appealing pharmacy may not be able to use before the short-dated drugs expire;
- A drug that is only available to a pharmacy owned by the PBM or a carrier at that special price
- A drug that is not carried by the appealing pharmacy's drug suppliers
- A drug that can only be purchased by paying additional costs associated with purchasing from non-contracted, non-customary drug suppliers
- A drug that can only be purchased at the lower price if the appealing pharmacy purchases larger-than-usable quantities

WSPA comment: Based on our members experience filing appeals with the PBMs, we are providing some examples of why we feel it is important to insert the above language in purple.

- Regularly PBM's point to a short-dated drug for sale at a lesser price that is not in the best interest of patient care and;
- A PBM pointing to a drug that is only available to a pharmacy owned by the PBM or a carrier at that special price;
- Usually in the first-tier appeal the PBM's simply list an NDC #, but no evidence that the NDC was available to the appealing pharmacy or other small pharmacies (as defined in WAC 284-180-420(1)(e)) located in Washington State at a price less than or equal to the predetermined reimbursement cost.
    - The OIC has hundreds of examples of this "oversight" by BPM's, with the second-tier appeals that have already been submitted through the OIC portal.
- On multiple occasions during second-tier appeals, PBM's have been caught quoting steeply discounted drug prices only available to their own PBM owned mail order pharmacies obviously not meeting the criteria for WAC 284-180-400(5).
    - Examples and OIC appeal case # available upon request

WAC 284-180-420 Appeals by network pharmacies to the commissioner

1) Grounds for appeal.

The petition for review must include:

> *(v) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and is available to the appealing pharmacy at a price that is less than or equal to the predetermined reimbursement cost for the multisource generic drug.*

WSPA comments: The WSPA is seeking further clarification from the OIC regarding this new language. We suggest removal of this section.

What documentation is the OIC looking for with this language? The language as currently written is unclear and redundant, WAC 182-180-420 (iii) already requires the appealing pharmacy to provide such documentation from the appealing pharmacy's first-tier review with the PBM. We are seeking clarification regarding the purpose of this new language.

If the section should remain, we would like to ensure our suggested language in WAC 284-180-400 carries throughout this section as well.

> *(v) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and is available to the appealing pharmacy at a price that is less than or equal to the predetermined reimbursement cost for the multisource generic drug.*

WAC 284-180-420 Appeals by network pharmacies to the commissioner

(3) Relief the commissioner shall provide. *The commissioner, by and through the presiding office or reviewing officer, ~~may~~ shall enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal or ~~may~~ shall take other actions deemed fair and equitable*

WSPA comment: We would like to see "shall" replace "may." This provides the OIC the much needed direction and clearly defines the enforcement authority over the PBMs.

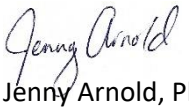
REPEAL WAC 284-180-330 and 340 are repealed.

WSPA comment: Can you provide an explanation as to why these two have been repealed? Where is the OIC's fining capability of a PBM when it comes to small pharmacy reimbursement appeals? We want to make sure there is no loss of OIC's ability to fine a PBM when a violation is knowing and willful pertaining to prescription drug reimbursement appeals.

On behalf of the members of the WSPA we want to thank the staff at the Office of the Insurance Commissioner who put these rules together. We appreciate their willingness to adopt rules that focus on the intent of 2SSB 5601, to protect Washington's consumers, payers and pharmacies from the predatory business practices performed by pharmacy benefit managers (PBMs.)

We expect 2SSB 5601 will begin to provide the necessary practice transparency and provide the OIC proper enforcement authority over the PBMs.

Sincerely,



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