



September 14, 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 R 2020-4 Health Care Benefit Managers

Dear Ms. Weeks-Green:

I am writing on behalf of the Washington State Pharmacy Association (WSPA) to provide comments on R 2020-04 health care benefit managers. WSPA urges the Office of the Insurance Commissioner 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.) For over two decades, the pharmacy profession has been dealing with PBMs unfair business practices. We have watched the PBMs overcharge payers and consumers while undercutting pharmacies for dispensing prescriptions and providing necessary services to Washington State patients, with literally no available recourse or ability to file complaints. The predatory nature of PBMs 'take-it or leave-it' contract terms have forced many pharmacies to close their doors for good, especially in rural and underserved areas such as Camano Island (where the only pharmacy on the island had to close), and other pharmacies must toe-the-line in order to keep their doors open for patient access.

We expect 2SSB 5601 will begin to provide the necessary contract and business practice transparency and provide the OIC proper enforcement authority over the PBMs. For far too long the PBMs have operated unchecked with very little, and for some, zero recourse.

We appreciate the OIC's approach in utilizing WAC 284-180 as its base to work off. Using the existing WAC and modifying it to reflect the provisions of 2SB 5601 is helpful due to the work that was put into creating the WAC back in 2016.

We do have a few comments and concerns we would like to highlight.

WAC 284-180-220 thru 320 Health Care Benefit Manager Registration, Renewal, Providing and updating registration information and records

WSPA is interested in knowing how the OIC plans on holding Health care benefit managers accountable for registering, renewing, and providing accurate information in a timely manner?

WAC 284-180-240 Providing and updating registration information

(d) Other business licenses that the benefit manager has held and those that are active

It is critical this language remain in the rule. Often PBMs, change their names, merge with others, operate under several names and perform various services. It is important for the OIC to be aware of all

the possible names PBMs operate under, understand any other businesses, activities, or other services they may provide. Several of the PBMs operate in a very elusive manner. Strong language in this section will allow the OIC a more complete picture of all business licenses the PBM may hold.

WAC 284-180-240 Providing and updating registration information

(4)(b) Any material change in the information provided to obtain or renew a registration.

Again, it is critical to keep this language intact to be sure the OIC has all updated information and stay on top of all changes the PBMs have made to their businesses and or services they provide.

WAC 284-180-445 Rules for revised or replaced forms

It would be helpful if this section applied to the providers the carriers and benefit managers contract with. Providers receive addendums, memos, or notes of contract change from the PBMs indicating major changes in their contracts without clearly identifying those changes. This happens on a regular basis. It is complex and confusing, especially since the PBMs send these changes in a piecemeal fashion. In addition, PBMs have several contracts for the same carrier that apply to different patient populations.

Requiring the PBMs to provide detailed explanations of all material changes in an exhibit that marks and identifies each change revision using strikes through deletions and underlines and additions explaining those changes would be helpful to the providers to know exactly what has changed for which patient population and where in their contracts those changes will occur.

WAC 2840180-455 NEW Carrier filings related to health care benefit managers

(4) If a carrier enters into a reimbursement agreement that is tied to health outcomes, utilization of specific services, patient volume within a specific period of time, or other performance standards, the carrier must file the reimbursement agreement with the commissioner within thirty days following the effective date of the reimbursement agreement...

It is imperative this language remain strong in the rule. This was a primary component that lead to introducing SB 5601. It is simple transparency. It is important to begin to shed light on the various agreements between the carriers and the PBMs that have been in the dark for decades. Most of these “outcomes” and “utilization of specific services” is financially motivated by the PBMs which is why we support the OIC looking at the contracts between the carriers and benefit managers. Often the design of these agreements negatively impacts the quality of patient care, patient access, and safety with misaligned incentivization. This language will provide much needed transparency with these agreements and finally allow the Commissioner to see the reimbursement agreement methods and requirements between these two entities.

Complaint process

Based on our understanding, the onerous process to ensure PBMs are following the law and rules in-regards to appropriate financial dealings with pharmacies will be through the provider complaint process. We would like to see a contingency in place to allow for an OIC investigation and broad resolution action taken when there are repeat complaints about certain PBMs. Filing each complaint takes time away from caring for patients and performing essential functions, if a PBM is continuously engaging in inappropriate activities, at some point the situation should be taken from a complaint-by-complaint situation and addressed through a broader process. With the vast resources that PBMs have

and the relatively minute resources that pharmacies have, this seems like a fair way to ensure that the bulk of the administrative burden is not placed on pharmacies and rather there is a shared burden.

WSPA appreciates the opportunity to share our comments. If you have any questions about the information in these comments please do not hesitate to contact me at Jeff@wsparx.org.

Respectfully,

A handwritten signature in black ink, appearing to be 'JR' with a stylized flourish.

Jeff Rochon, Pharm.D., FAPhA
Chief Executive Officer