

June 21, 2024

Rules Coordinator  
Office of the Insurance Commissioner  
302 Sid Snyder Avenue SW  
Olympia, WA 98501

Subject: PHP Comment on Prior Authorization Modernization and Substance Use Disorder Treatment CR-101

Providence Health Plan (PHP or Providence) offers this comment to support the Office of the Insurance Commissioner's (OIC) efforts to adopt rules that implement new prior authorization decision timelines and interoperable automated programming interface (API) requirements, per House Bill 1357 (2023).<sup>1</sup> PHP is a community-based health plan that provides health insurance to just under 2,000 Washingtonians. We have received less than 50 prior authorization requests in the plan year 2023 for our Washington membership.

As a provider-sponsored health plan, Providence Health Plan supports efforts to modernize prior authorization, easing burdens for patients and providers while maintaining cost and quality controls that support patient safety and ensure the best use of premium dollars. Nevertheless, Providence respectfully requests that the OIC reconsider the implementation timeline for the required advancements, to allow health plans to comply through emerging vendor solutions and to recognize the disproportionately heavy burden small health plans would bear to implement these requirements by January 1, 2026.

### **Three-year Runway Needed Subsequent to Finalization of Technical Specifications**

Recently, CMS finalized rules requiring carriers nationwide to adopt prior authorization APIs by January 1, 2027.<sup>2</sup> These rules not only differ from Washington's mandate in respect to timeframe, but they also have a more discreet scope, not requiring APIs for prescription drug authorizations, for example. Originally, CMS planned to require implementation of the PA APIs in 2026. However, in response to industry concerns about the time needed for API developers to develop, test, and release updated software and the subsequent requirements on plans to implement the updated functionality and recruit and train staff to assist API end users, CMS determined that 3 years was needed for a realistic implementation timeline. Where Washington

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<sup>1</sup>

E2SHB 1357, 68<sup>th</sup> Leg. (1st Sess. 2023).

<sup>2</sup> CMS Interoperability and Prior Authorization Final Rule (CMS-0057-F), 89 F.R. 8758 (Feb. 8, 2024) (to be codified at 42 CFR 422, 42 CFR 431, 42 CFR 435, 42 CFR 438, 42 CFR 440, 42 CFR 457, 45 CFR 156).

is asking for more functionality than the federal rules, it stands to reason that Washington should afford as much, if not more time, to enable viable implementation. Although Washington has had its mandate in place for some time, technical specifications for software development were only finalized earlier this year in the final rule from CMS. As such, the three-year runway could not begin prior to February 2024, even for APIs for Washington users, as those APIs will also need to service communications outside of Washington.

### **Vendor Solution Viability**

A significant amount of software development must happen before carriers can implement the PA API requirement, given the extensive nature of interoperable API. Due to the small size of our health plan, in-house development is cost-prohibitive for us. As such, we rely upon vendor support to meet the requirements. However, market dynamics created by the federal rules have created a situation where vendors are not able to have software ready to support a January 1, 2026, implementation. Further, additional features beyond what the federal rules require will likely not be available for implementation by January 1, 2027. Despite our efforts to identify an appropriate vendor, PHP has yet to hear of any timelines where vendors will develop viable platforms in compliance with HB 1357's implementation deadline.<sup>3</sup> We strongly recommend that the OIC exercise enforcement discretion to allow carriers more time to meet the Washington requirement, ideally sometime subsequent to the federal implementation date.

### **Safe Harbor for Small Carriers**

While Providence recommends broad enforcement discretion that would apply to all carriers, alternatively Providence Health Plan seeks a safe harbor for WA health plans with a small footprint in the state. For carriers with less than one percent of the commercial market, OIC should allow compliance with the related federal rules to serve as sufficient compliance with WA's mandate. A precedent exists in the Revised Code of Washington (RCW) that exempts certain health insurance carriers from prior authorization requirements. For example, carriers that cover less than one percent of the Washington insurance market, such as PHP, are exempt from annual prior authorization reporting requirements.<sup>4</sup> This exemption appropriately recognizes the greater burden small carriers experience when implementing requirements that have onerous administrative and/or financial impacts that must be borne over a smaller population. This exemption further recognizes the small impact on WA members and providers due to the small footprint of the plan. By making distinctions for small plans in the state, Washington allows plans to emerge and grow in Washington, bringing more choice and competition to the state's insurance market.

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<sup>3</sup> E2SHB 1357 (2023)

<sup>4</sup> RCW 48.43.0161

Please reach out, should you have any questions regarding this comment letter. I appreciate your time and consideration.

Kind regards,

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