

March 20, 2015

VIA E-MAIL: rulescoordinator@oic.wa.gov

Mr. Jim Freeburg, Special Assistant to the Commissioner
Policy & Legislative Affairs
Office of Insurance Commissioner
P.O. Box 40258
Olympia, Washington 98504-0258

Subject: OIC Matter No. R 2014-08 – Network Access

Dear Jim:

Thank you again for the stakeholder meeting held on March 12, and the opportunity to comment on this second exposure draft of the network access rule. The comments in this letter are being made on behalf of Premera Blue Cross, LifeWise Health Plan of Washington, and LifeWise Assurance Company (herein “Premera” or “the Companies”). We appreciate the productive and informative communications that have already taken place.

Our comments summarize the key points we believe need to be addressed and considered in this rule, and re-state, for the sake of completeness, a number of comments made at the meeting. In addition, we would refer you to the prior comment letter we submitted on this subject, dated October 31, 2015.

WAC 284-43-202 Maintenance of sufficient networks.

Subsection (2) requires written notification to the OIC of potential contract terminations within five days, followed in many cases by submission of alternative access delivery requests (AADRs). As stated, we are very much concerned that these requirements as drafted will unleash unnecessary paperwork, for which the preparation and review would entail countless hours of work, in contexts where ultimately no network disruption ensues. Both issuer and provider representatives at the meeting confirmed our statement that providers routinely initiate contract negotiations by sending the issuer a termination notice; in the majority of cases, negotiations come to fruitful conclusion without network disruption.

We respectfully suggest that an alternative, less burdensome solution be defined, and we will be happy to work with you further. Our recommendation would be to limit an initial notice to your office to a very simple one, which is followed by the analysis and submission of an AADR or other details only when it becomes clear that negotiations are not successful.

In addition, we believe that the one-day turnaround time to submit an AADR in certain cases is so unrealistic that it will not be met. While we recognize this is viewed as a last-resort approach by the OIC, we believe it makes more sense to provide the issuer an opportunity to meet the requirements identified by your office, within a practical timeframe. Five days would appear to be very demanding but not unachievable.

For subsection (3)(f), you have asked issuers to identify which chronic conditions should be included in the requirement; we are continuing to evaluate what such a list would look like. This has proven to be a complex task, as a list of this nature is likely to differ somewhat by issuer, and is subject to change over time. To the extent we are able to identify conditions that ought to be included, we will follow up with more details.

For the kinds of network models addressed in subsection (5)(d), we respectfully restate our request to your office to clarify the intent here, and to provide examples of what would fit under this description.

WAC 284-43-225 Issuer recordkeeping—Provider networks.

We'd like to re-state our concern about subsection (2). Prior authorizations are a utilization management measure, and do not belong in a network access rule. If the OIC decides not to delete this subsection as we recommend, we believe the intent of what is encompassed under "prior authorization" must be clarified to include only those that are required under the enrollee's contract, and not those that are requested but not necessary.

WAC 284-43-251 Enrollee's access to providers. We believe that the requirement for a minimum of 30 days' notice to enrollees of a network termination does not serve enrollees well, because negotiations may be ongoing. We respectfully request that the rule incorporate an exception for those situations. It is in the best interest of enrollees as well as providers to avoid premature announcements of such terminations when a termination may well not occur. This requirement would otherwise result in enrollee confusion, multiple communications, and potential provider changes by enrollees, where none of that is necessary.

WAC 284-43-310 Selection of participating providers – Credentialing and unfair discrimination.

We continue to believe that the broad language in subsection (1)(c) can be read to preclude an issuer from making a determination that a particular provider type is amply represented in an existing network, and that consequently no new additional contracts will be offered to providers of this type. While we understand that you believe the language in subsection (3) clarifies the intent not to interfere with issuer network strategies when the network is adequate, we believe this must be made clearer. We urge you to cross-reference the subsections, and to identify what subsection (1)(c) is intended to accomplish.

WAC 284-43-320 Provider contracts – Standards – Hold harmless provisions. We strongly suggest that significant lead time be allowed for including these language changes in existing provider agreements, particularly those that are highly customized and extensively negotiated. We recommend that the effective dates for this rulemaking incorporate a staggered approach where standard forms will have to include the new language by a prospective date that gives

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sufficient lead time to plan such revisions; where negotiated forms will incorporate the new language when they are next otherwise revised or renewed. And in addition, a safe-harbor request should be allowed where an issuer is in the process of overhauling standard forms based on a defined schedule that would result in completion later than the rule would otherwise provide; such request would be submitted to your office with a set target date for the forms revisions.

We appreciate your consideration of these comments and recommendations, and will be happy to discuss them with you further. Please feel free to contact me. Thank you again for the opportunity to review.

Sincerely,

A handwritten signature in blue ink that reads "Waltraut Lehmann". The signature is written in a cursive style.

Waltraut B. Lehmann
Manager, Regulatory Affairs