AWHP
ASSOCIATION OF WASHINGTON
HEALTHCARE PLANS

January 14, 2022

Jane Beyer, Senior Health Policy Advisor
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P.O. Box 40258
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Submitted via email to: rulescoordinator@oic.wa.gov
JaneB@oic.wa.gov
BryonW@oic.wa.gov

Re: Implementation of E2SHB 1477 and Consolidated Health Care Rulemaking (R2021-16)
Second Stakeholder Draft

Dear Ms. Beyer and Mr. Welch:

On behalf of the Association of Washington Healthcare Plans (AWHP), we appreciate the OIC's continued engagement and responsiveness to our comments to the previous draft and proposed rule.

We remain concerned with issuers' ability to comply with requirements as proposed. It is especially difficult to plan to meet those requirements without knowing the format planned for **988 Crisis Hotline Appointment Form D**.

Additionally, issuers are concerned with our ability to comply with the proposed amendments to Network Access Plans addressing access to gender affirming treatment.

AWHP respectfully requests an opportunity to meet with OIC staff responsible for rule development for *Implementation of E2SHB 1477 and consolidated health care rulemaking (R 2021-16)* in an effort to work together to meet requirements of the law in a manner that will serve both the OIC's and issuers' requirements and processes as well as Legislative intent. We believe using a workgroup style process with iterative conversation between all parties responsible for implementing and compliance with E2SHB 1477 will result in a successful outcome.

We look forward to having this conversation soon. We understand it may not be possible prior to the comment deadline of January 21, especially with the Legislature in session. AWHP will make every effort to accommodate OIC staff's schedule.

Thank you for your consideration.

Sincerely,

Terri Drexler
Policy Analyst

January 21, 2022

Jane Beyer, Senior Health Policy Advisor
Bryon Welch, Policy and Rules Manager
Shari Maier, Health Policy Analyst
Washington Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504-0258
Submitted via email to: rulescoordinator@oic.wa.gov

RE: Implementation of E2SHB 1477 and Consolidated Health Care Rulemaking (R2021-16) Second Stakeholder Draft

Greetings:

On behalf of the Association of Washington Healthcare Plans (AWHP), thank you for the continued opportunity to participate in the stakeholder process for rulemaking to implement E2SHB 1477. AWHP appreciates the Office of the Insurance Commissioner's consideration of our previous comments, however, we remain concerned with a number of items.

AWHP and its members respectfully request the OIC reconsider its decision not to conduct an additional stakeholder meeting to discuss the challenges of the proposed reporting requirement. The administrative burden placed not only on carriers, but behavioral health providers who will need to report their appointment availability to potentially multiple parties will be extremely burdensome. Unlike many other multi-specialty physical health clinics and facilities, many behavioral health providers are solo practices with little or no administrative staff. It is important to note there is a shortage of behavioral health providers across the state. Adding this additional burden on providers to procure data needed for reporting will worsen the workforce shortage issues that remain a barrier since the pandemic. In addition, 988 has yet to be operationalized therefore reporting should only occur 6 months post "go-live" in any region—giving the providers and carriers time to monitor the new process of 988 without any undue burden of data reporting.

We believe a meeting that included at least the two entities responsible for providing and reporting the data would assist in the work of pre-empting confusing definitions, operational constraints and help inform development of the 988 Crisis Hotline Appointment Form D.

We acknowledge this meeting may not fit into the standard procedural requirements of the Administrative Procedures Act (APA,) but it is within the legislative intent of the APA as expressed in Laws of 1993 Ch. 202:

Finding—Intent—1993 c 202: *"The legislature finds that while the 1988 Administrative Procedure Act expanded public participation in the agency rule-making process, there continue to be instances when participants have developed adversarial relationships with each other, resulting in the inability to identify all of the issues, the failure to focus on solutions to problems, unnecessary delays, litigation, and added cost to the agency, affected parties, and the public in general.*

When interested parties work together, it is possible to negotiate development of a rule that is acceptable to all affected, and that conforms to the intent of the statute the rule is intended to implement.

After a rule is adopted, unanticipated negative impacts may emerge. Examples include excessive costs of administration for the agency and compliance by affected parties, technical conditions that may be physically or economically unfeasible to meet, problems of interpretation due to lack of clarity, and reporting requirements that duplicate or conflict with those already in place.

*It is therefore the intent of the legislature to encourage flexible approaches to developing administrative rules, including but not limited to negotiated rule making and a process for testing the feasibility of adopted rules, often called the pilot rule process. However, nothing in chapter 202, Laws of 1993 shall be construed to create any mandatory duty for an agency to use the procedures in RCW **34.05.310** or **34.05.313** in any particular instance of rule making. Agencies shall determine, in their discretion, when it is appropriate to use these procedures." [**1993 c 202 § 1**.]*

OIC's proposed addition of subsection (3)(c)(iii) reflects the importance of ensuring a robust Stakeholder process as you develop the 988 Crisis Hotline Appointment Form D. We look forward to participating in a process to ensure data elements requested in the report can be collected in a manner that best serves all the parties who will use the data to assess efficacy and needed improvements to our behavioral health system. To that end, we recommend limiting the potential scope of inputs to sources that can be externally validated by the OIC.

Additionally, to properly configure the report and required data streams, carriers will need at a minimum six months to configure once the template is received. For context, Network Form A reporting infrastructure has taken over one year to configure and requires continual monthly validation.

AWHP remains concerned with proposed reporting cadence, especially given the wide range of possible due dates now proposed and the late date at which carriers will be notified of the frequency. Without clear guidance as to the frequency in advance of the reporting period it will be untenable to configure the report and required data streams that will need to be incorporated. We suggest OIC consider a frequency range of no more frequent than monthly, similar to reporting for Network Form A.

In alignment with these concerns, we propose the following changes to WAC 284-170-280(3)(c):

(c) **988 Crisis Hotline Appointment Form D report.** For health plans issued or renewed on or after January 1, 2023, issuers must make next-day appointments available to enrollees experiencing urgent, symptomatic behavioral health conditions to receive covered behavioral

health services. Beginning ~~January 7, 2023~~, **no sooner than six months following the effective date of this rule and finalization of the reporting data elements**~~.~~ issuers must submit a report that will document their health plans' compliance with next day appointment access. ~~including a count of enrollee appointments available for urgent, symptomatic behavioral health care services.~~

(i) The report is due on the dates published on the office of the insurance commissioner's website and will be set each calendar year. The office of the insurance commissioner will publish the first reporting date by December 1, 2022, and by each December 1st thereafter. The reporting time frame will be no more frequent than ~~weekly~~ **monthly** and no less often than twice yearly.

(ii) The report must contain all data items shown in and conform to the format of the 988 Crisis Hotline Appointment Form D report prescribed by and available from the commissioner.

(iii) The report must reflect information from ~~any~~ sources available at the time the reporting is completed including, but not limited to:

(A) All requests the issuer has received from any source including, but not limited to, an enrollee, their provider, or a crisis call center hub;

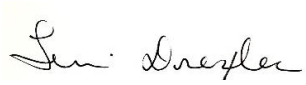
(B) The issuer's claims data; and

(C) The behavioral health crisis call center system platform and the behavioral health integrated client referral system, once those are established and providing real-time information relevant to the coordination of behavioral health crisis response and suicide prevention services, as provided in chapter 71.24 RCW, and that information is accessible to the issuer.

Finally, we again urge the OIC to remove the gender affirming treatment standards from the network access plan requirements in WAC 284-170-280(3)(g)(i)(J). Carriers do not contract with providers at the service-level, carriers may not be able to provide the data around proximity of gender affirming treatment services to primary care sources or tracking network capacity and availability for gender affirming treatment services. There is not a similar requirement for other diagnosis specific services for this reason.

Thank you for your consideration of our comments.

Sincerely,



Terri Drexler
Policy Analyst