



August 12, 2022

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P.O. Box 40258
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Submitted to rulescoordinator@oic.wa.gov

Re: R2022-02 Implementation of E2SHB 1688: Pre-publication CR102 draft
PacificSource Health Plans comments

Dear Jane:

PacificSource Health Plans appreciates the opportunity to provide input as the Commissioner develops this rule-set for adoption, implementing E2SHB 1688. We hope these are helpful to you and the rule team. If there are any questions, please don't hesitate to reach out as we are happy to help.

Proposed WAC 284-43A-010 *Inclusion of Balance Billing Protection Act (BBPA) or No Surprises Act (NSA) statutory action as an adverse benefit determination (ABD)*

By defining carrier action related to balance billing as an adverse benefit determination, the proposed amendment triggers notice requirements to members by carriers of their rights to appeal the ABD. However, RCW 48.49.020 does not involve activities of carriers. While the title of the statute references carrier's duty to hold an enrollee harmless, the actual language of the statute pertains to provider and facility duties to enrollees. Carriers would not be in a position to know if the nonparticipating provider or facility did or did not balance bill an enrollee and would not be in a position to affirm or deny an ABD. The sole obligation of carriers is in WAC 284-043A-0-10 (2) (d) and requires making information available to providers about enrollee eligibility for BBPA or NSA protection. The rule needs to clarify what action and at what point in time the need to inform the enrollee of their rights to appeal the ABD if this is not done is triggered. We ask the OIC to include clearer guidance in the rule on how to implement this.

Similarly, the reference to RCW 48.49.030 is unclear as to what specific 'decision' required under the statute and at what point in time does the decision triggers the carrier's obligation to advise an enrollee of their ABD appeal rights.



Given that the overarching goal of BBPA was to keep the member out of the middle, we need to understand specifically what actions of the multiple obligations requires us to engage with the member so that they can appeal.

Proposed WAC 284-43B-015 Coverage of Emergency Services

The proposed rule prohibits carriers from requiring a transfer of a stabilized patient to an in-network facility. The legislative changes to RCW 48.43.093 do not include this prohibition. Instead the legislation requires notice of stabilization (RCW 48.43.093 (3)). Presumably there is a reason for this – both to negotiate a single case agreement with the nonpar facility and providers and to determine if a transfer to an in network facility is appropriate. Part of managing care for a patient includes ensuring the patient is treated at a facility that is credentialed and understands the clinical criteria and processes of the plan to ensure that covered services are available, and care criteria are met.

We are curious about why the Commissioner wants to lock a patient at a non-participating facility into an in-patient stay there without giving carriers the ability to facilitate a transfer to a participating facility once they are stable. While the member is held harmless from balance billing, the carrier is obliged to pay billed charges for the length of stay after an admission for an emergency condition.

It is possible this language could be interpreted to bar hospital to hospital transfers for higher level care under EMTALA even when in the member’s best interest. We ask that the sentence barring carrier requirement of transfer be removed or clarify that when the medical emergency and post-stabilization care directly tied to that emergency end, the carrier may require transfer to a participating hospital.

Proposed WC 284-43B-032 Applicable dispute resolution system

PacificSource asks that the Commissioner specify a date certain for a decision and the duration of that decision as to which dispute resolution process applies in Washington. Mirroring the language of the statute “or a later date determined by the commissioner” provides insufficient guidance to carriers. We need to schedule process changes, train staff, revise policies and procedures, program claims and appeals systems and implement these changes as part of operational work flow. For this, we ask for specific dates or at a minimum notice of when the decision will be made, or re-evaluated, reduces implementation costs and promotes administrative efficiency. Please allow at least 4 months’ notice of any process changes.

Proposed WAC 284-43B-035 (5)(a) Arbitrator list



Please list each arbitrator individually and not at the "entity" level. When objecting to an adjudicator, a party is selecting the specific person and not the entity that employs or makes them available.

Proposed WAC 284-170-210(2) (b) Good faith contracting

This section explains how the OIC will assess whether a carrier engaged in good faith efforts to contract. We ask that the OIC provide more definition of what constitutes "appropriate staff". Carrier outreach to contract is always done with the intent to reach a person who can discuss contract terms. We suggest that the requirement be removed.

Proposed WAC 284-170-220 AADR for BBPA services

We ask that the OIC clarify what a "service" is for purposes of this AADR, since the proposed regulation limits each of these AADR types to a "service," and envisions filing multiple AADRs for differing services. Is this at a CPT code level or is this under a larger umbrella of "hospital services," "neonatology services," etc?

The proposed regulation explains in (e) how carriers may NOT use this AADR, but does not explain what it may be used for. If the sole purpose is to set rates for a defined set of CPT codes, or if there is a different goal, that would be helpful to know. We ask that the purpose of the AADR be set out as part of this regulation so that drafters of the AADRs have that context to guide them.

Proposed WAC 284-170-280 New Map for Behavioral Health Emergency Services

Does the proposed distance standard apply to behavioral health emergency providers in the aggregate or for each separate type listed in the definition of behavioral health emergency providers in RCW 48.43.005?

Thank you for considering our comments.

Sincerely,

PacificSource Health Plans by:

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