



OFFICE OF
INSURANCE COMMISSIONER

April 17, 2020

Monique Whitney, Executive Director
Pharmacists United for Truth and Transparency
326 South Main Street
Winston-Salem, North Carolina 27101

Dear Ms. Whitney,

Thank you for your March 30, 2020 letter regarding the concerns of pharmacists during the COVID-19 emergency. The Office of the Insurance Commissioner (OIC) greatly appreciates the work that pharmacists are doing as frontline, essential health care providers supporting access to care, both COVID and non-COVID related.

Commissioner Kreidler has asked that I respond to your letter on his behalf. As the chief insurance regulator in the state of Washington, the OIC has statutory authority to take immediate action when our Governor issues an emergency proclamation, which he did on February 29, 2020. This authority is granted by the Legislature under RCW 48.02.060 and includes the authority to address coverage offered through health insurance policies issued in Washington State to ensure Washingtonians retain access to care.

To date, Commissioner Kreidler has issued three emergency orders. These orders can be found on our Technical Assistance Advisories and Emergency Order webpage¹. These orders bar cost-sharing for Coronavirus testing and services related to testing, prohibit insurers from imposing prior authorization requirements on Coronavirus testing and treatment, direct insurers to allow early prescription refills, expand use of telemedicine services and mandate longer grace periods for employers and individuals to pay their health insurance premiums. Each emergency order was followed by a set of "Frequently Asked Questions" (FAQ) that provided additional detail on the directives included in the orders. These FAQ's can be found on the OIC's health insurance

¹ OIC Emergency Orders: <https://www.insurance.wa.gov/technical-assistance-advisories-and-emergency-orders>



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COVID-19 webpage². In addition, at Commissioner Kreidler's request, Governor Inslee issued Emergency Proclamation 20-29³ directing telemedicine payment parity on March 25, 2020.

In addition to the three emergency orders, Commissioner Kreidler has directed the OIC's Rates, Forms, and Provider Networks Division to exercise unprecedented flexibility and responsiveness to health insurers' requests to change employer sponsored health plans so that employers can keep their employees covered during this period, through actions such as reducing the number of hours employees must work to be eligible for benefits and covering former employees. Our state Health Benefit Exchange developed a special enrollment period so that people without health insurance would have an opportunity to enroll in needed coverage. That special enrollment period is open until May 8, unless it is extended by the Exchange.

With respect to the complaints referenced in your letter, prior to legislation enacted by the Washington state legislature during the 2020 Legislative Session the OIC had limited authority related to the practices of pharmacy benefit managers (PBM). Second Substitute Senate Bill (2SSB) 5601, signed by Governor Inslee on March 31, 2020, will establish an extensive registration system for health benefit managers, but this law is not effective until January 1, 2022. Pharmacy benefit managers will be considered health benefit managers under the law. Beginning on January 1, 2022, in addition to registration and requirements to file relevant contracts with the OIC, under 2SSB 5601, a PBM may not:

- Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;
- Use fraudulent, coercive, or dishonest practices, or demonstrate incompetence, or financial irresponsibility in this state or elsewhere;
- Charge a pharmacy a fee related to the adjudication of a claim, or for credentialing, participating, certification, accreditation, or enrollment in a network;
- Require pharmacy accreditation standards or certification requirements inconsistent with or more stringent than standards required by national accreditation organizations;
- Reimburse a pharmacy in the state an amount less than the amount the PBM reimburses an affiliate for providing the same pharmacy service; and

² FAQs: <https://www.insurance.wa.gov/coronavirus-and-health-insurance>

³ Emergency Proclamation 20-29: <https://www.governor.wa.gov/sites/default/files/proclamations/20-29%20Coronavirus%20OIC%20%28tmp%29.pdf>

- Deny, reduce, or recoup payment from a pharmacy for pharmacy services after adjudication of a claim unless the claim was fraudulent, or the denial or reduction was the result of a pharmacy audit.

With respect to the actions requested in your letter, and noting the OIC's limited authority prior to implementation of 2SSB 5601, here is some information:

1. Halt PBM pharmacy audits during the pandemic.

The requirements to participate in either an onsite or offsite "desk" audit must be set forth in the provider contract [WAC 284-170-460]. As a contractual obligation, we recommend the pharmacist review the requirements in their contracts to evaluate if the audit they have agreed to participate in has options to defer or delay the audit. If the contract is unclear we recommend the pharmacist reach out to their PBM contract manager to discuss potential options. As the OIC reviews further potential actions during the COVID-19 emergency, we will give consideration to this request.

2. Call a moratorium on PBM transaction and miscellaneous fees.

The OIC generally does not regulate payment or billing methodologies, including regulation of transaction and miscellaneous fees. Health carriers utilizing Pharmacy Benefit Managers have the option to determine the amount they will reimburse in-network pharmacies for providing pharmacy services. As noted above, SB 5601 will restrict these PBM practices.

3. Mandate PBMs reimburse pharmacies at the current market acquisition cost plus a reasonable dispensing fee.

The OIC generally does not regulate payment or billing methodologies, including regulation of drug cost and dispensing fees. Health carriers utilizing Pharmacy Benefit Managers have the option to determine the amount they will reimburse in-network pharmacies for providing pharmacy services. We are very aware of supply issues that have arisen related to hydroxychloroquine and other medications. In the FAQ issued by the OIC on April 7, the Commissioner authorized carriers to impose quantity prescribing limitations in order to sustain supply of critical medication. We know that health carriers are implementing protocols and procedures for the prescribing and dispensing of these medications. As the regulator of carriers, we are seeing action to mitigate these emerging issues.

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4. Allow Pharmacists to administer FDA-Approved vaccines and/or allow provider status for pharmacists.

Under Washington state law, administered by our Pharmacy Quality Assurance Commission, pharmacists obtain prescriptive authority by entering into a collaborative drug therapy agreements (CDTA)⁴.

Since 1979, the legislature has authorized pharmacists to initiate or modify drug therapy in accordance with written guidelines or protocols previously established for their practice by a practitioner authorized to prescribe drugs.

Once a CDTA is established, a pharmacist may prescribe drugs in accordance with the CDTA.

Washington statute allows a CDTA to authorize a pharmacist to prescribe any legend drug, in addition to controlled substances. When a pharmacist provides health care services, including those provided under a CDTA, health plans are required to cover these health care services in the same manner as other health care providers, e.g. physicians. In implementing its duty to regulate the practice of pharmacy, the Pharmacy Quality Assurance Commission has adopted rules around pharmacists exercising their prescriptive authority under a CDTA.

If you have additional questions, please contact me at Mollyn@oic.wa.gov.

Sincerely,

/s/ *Molly Nollette*

Molly Nollette
Deputy Insurance Commissioner
Rates, Forms, and Provider Networks Division

⁴ Department of Health CDTA information: <https://www.doh.wa.gov/Portals/1/Documents/Pubs/690327.pdf>