



January 8, 2016

Ms. Bianca Stoner  
Office of the Insurance Commissioner  
State of Washington  
P.O. Box 40258  
Olympia, WA 98504-0258

RE: R 2013-11 (Protection of privacy)

Dear Ms. Stoner,

On behalf of Cambia Health Solutions family of insurance companies, including Regence BlueShield, Asuris Northwest Health, and BridgeSpan Health Company, thank you for the opportunity to provide the following comments to the December 3, 2015, stakeholder draft of the protection of privacy rulemaking (R 2013-11).

In general, we strongly support OIC's stated goal of protecting vulnerable individuals from unauthorized disclosures about their health care to others who are on the same health plan. Privacy protections are especially helpful to minors, victims of domestic violence and young adult children who are still on their parents' health plans. To this end, we have an existing comprehensive privacy program that prohibits unauthorized disclosures upon notification from a covered member.

The stakeholder draft before us is, in many ways, a good first attempt at standardizing protection of privacy regulations, but can be improved by making the following changes.

**WAC 284-04-120**

Subsection 22 states that "non-essential information" means protected health information as defined in HIPAA. To provide consistency between state and federal law, OIC should simply state that personal health information is defined in HIPAA and not give a new term the same meaning as a term defined in federal law. If OIC decides to delete term, then the reference to the terms needs to be removed in WAC 284-04-505 (5)(b)(i)

**WAC 284-04-500**

Subsection 10 requires carriers to provide information to enrollees about the Secretary of State's confidentiality program as described in WAC 434-840. Since title 434 WAC applies to the Secretary of

State and not insurance carriers, it is inappropriate for the OIC to require carriers to provide information about a program that does not apply. The carriers are not uniquely equipped to provide information about a Secretary of State program to them. The OIC may wish to provide information about the Secretary of State's confidentiality program on its consumer portal website.

Subsection 12 requires carriers to make policies, standards and procedures pursuant to this section available to enrollees upon enrollment and in the materials that carriers provide to summarize plan benefits. We do not object to providing comprehensive information about our privacy practices, to enrollees upon request or on our website to be accessed at any time by enrollees. We currently provide the HIPAA required Notice of Privacy Practices at enrollment, upon request, and it is available on our website. However, if carriers are required to provide additional comprehensive information at the time of enrollment, members would be overwhelmed with a large amount of documents at the time of enrollment. Our own experience with our members tells us that members rarely revisit their already very large enrollment packets to obtain information about privacy matters. When members want information about privacy policies, members call our customer service line. From there, our customer service representatives explain the policy over the phone, guide members to the website to find the information, or mail information if needed. In fact, carriers already provide a HIPAA privacy statement that alerts members of their privacy rights. The OIC should carefully review carrier HIPAA privacy statements to see if the information contained in the statement accomplishes the goals of this subsection.

If OIC wishes to retain this subsection, the subsection can be improved by changing the language to read:

“A licensee must make information about the availability of its ~~the~~ privacy practices available to covered members:”

This amended language will allow carriers to keep enrollment packets down to a reasonable size and alert members that they can find comprehensive information about carrier privacy practices by calling carriers or visiting the carrier website.

#### **WAC 284-04-505**

Subsection 3(a)(iii) states that carriers are obligated to provide enhanced protection to a covered member if the carrier has actual knowledge that disclosure could jeopardize the member's safety. We want to do all that we can protect our member's safety. However, carriers are not equipped to decide what will or will not jeopardize a member's safety. For example, some teenagers share information about medical procedures with their parents, while others do not. Carriers have no way of knowing when disclosure of information will jeopardize the safety of a member. Therefore, it is important that the covered member, or a provider of that covered member, notify carriers when disclosure will jeopardize a member's safety, so that carriers are not in the position of making a subjective judgment call. Privacy decision around disclosure are best made by covered members in concert with their treating provider.

Subsection 5(b)(ii) states that when a carrier has an obligation to limit disclosure of covered member information, the carrier must not mail information about a claim to the policyholder, unless the policy holder has requested the information and the carrier has taken reasonable steps to protect covered member privacy. This subsection is confusing. Policy holders have a right to obtain information about deductible amounts. Therefore, if a policy holder requested information about a deductible amount, we would send information to the policy holder about the deductible amount, but redact protected health information that would violate a non-disclosure request made by a covered member. Is this practice consistent with the intent of this subsection?

Subsection 7(i) states that, when requesting non-disclosure, covered members must include in the request the name and address of the covered member. To make a non-disclosure request successful, carriers need more information about the covered member making the request, otherwise the potential for error remains very high, since many members have the same or similar names. The OIC can improve this subsection by amending the section to include the member's first name, last name, member ID, preferred email address, and the member's preferred alternate address for communications (including the provider's address if requested by the member).

Subsection 7, in general, permits providers, who request non-disclosure on behalf of a covered member, to supply the provider's contact information to the carrier for covered member correspondence. Covered members, or a personal representative of an individual, should be allowed to make these requests to redirect information. However, if providers are allowed to use their own contact information for a covered member, with no external check, some may engage in fraudulent billing practices. For example, we recently had experience in Utah regarding fraudulent provider practices. There, providers shopped for patients, ensured individuals signed powers of attorney to the provider, changed the member's address, and billed for substance abuse treatment that was often never provided. The benefit checks, issued to the covered member, were intercepted and cashed by these providers. We do not want to see this happen in Washington. More information about this issue in Utah can be accessed at the following link: <http://archive.slttrib.com/story.php?ref=/news/3092490-155/utha-lawmakers-hearing-allegations-of-horrific>

To combat the likelihood of fraud, we urge the OIC to include language in Subsection 7 that would allow carriers to intervene in non-disclosure requests if carriers have reason to believe a provider is engaging in fraudulent billing practices.

#### **WAC 284-04-515**

Subsection 1(a) states that a valid authorization for non-disclosure must include the identity of the covered member. As discussed above, carriers need more information from a covered member in order for the non-disclosure request to be successful. At a minimum carriers need the identity of the covered member, who is the subject of the nonpublic personal health information, including the individual's first name, last name and member ID.

I am happy to discuss these issues with you at any time. I can be reached at 206-332-5060 or [zach.snyder@cambiahealth.com](mailto:zach.snyder@cambiahealth.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Zach Snyder', with a stylized, cursive script.

Zach Snyder  
Cambia Health Solutions  
Regulatory Affairs