

September 28, 2023

Joyce Brake  
Washington State Office of the Insurance Commissioner  
P.O. Box 40258  
Olympia, WA 98504-0260  
Submitted via email to: [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov)

Re: Comments on R 2023-02 Revising the Prior Authorization Process

Dear Ms. Brake,

Kaiser Foundation Health Plan of the Northwest, Kaiser Foundation Health Plan of Washington, and Kaiser Foundation Health Plan of Washington Options, Inc. (collectively “Kaiser Permanente”), appreciate the opportunity to provide feedback to the Office of the Insurance Commissioner (“OIC”) on the prepublication draft for prior authorization (R 2023-02). Kaiser Permanente is an integrated health care system that covers and cares for Washingtonians. We are committed to delivering affordable, coordinated, and high-quality care and coverage that supports not only our members but also the communities we serve. Our comments focus on the two topics of the definition of “electronic” and the plain language requirement for medical necessity criteria.

**Email not considered a method of “electronic” prior authorization**

E2SHB 1357 does not provide a definition of “electronic.” The prepublication draft adds a definition and expands the concept of “electronic” request to include email. We do not agree with the definition as proposed in the prepublication draft. Email requires just as much data entry as a fax or a phone call to get the information into the prior authorization system.

*Current regulation*

Under the existing regulation in WAC 284-43-2050 (4) and (5), carriers must have an online prior authorization process that is secure and allows the participating provider or facility to complete their request and upload all documentation. All parts of the process that utilize personally identifiable information must be accessed through a secure online process. The online process must be accessible to a participating provider and facility so that, prior to delivering a service, a provider and facility will have enough information to determine if a service is a benefit under the enrollee’s plan and the information necessary to submit a complete prior authorization request. The concept of email as an electronic submission that is eligible for a quicker turnaround time undermines the existing prior authorization processes that carriers have implemented to comply with WAC 284-43-2050 (4) and (5) and creates issues with the privacy requirements of HIPAA.

### *Legislative intent*

The legislative intent is to move toward an application programming interface (API) as described in RCW 48.43.830 (2). It was not the legislative intent to take a step backwards from the current state of health carrier online prior authorization process by recognizing email in this way. While we all work toward the future state, it is important that health care providers and facilities continue to have an incentive to use the secure, online prior authorization systems that health carriers already have in place.

Our understanding during the legislative negotiations was that a two-way secure electronic communication platform needed to be used for the request to be considered “electronic” and therefore eligible for the faster decision-making time periods.

As the OIC considers the regulation language, we’d like to point out the resources that follow from national entities to help inform your thinking about prior authorization and the concept of email.

### *HIPAA standards*

It’s important to note that prior authorization has two parts: request from the provider and response from the payer. The prior authorization transaction is defined in HIPAA Administrative Simplification regulations. The current standard adopted nationally is the X12N 278 transaction standard. Email is not an accepted method for requesting a prior authorization (provider to plan) or responding with an approval or denial (plan to provider). In fact, it would be a violation of the current HIPAA standard to use email.

### *HL7 FHIR (Fast Health Interoperability Resources) standards*

The new Prior Authorization API adopted by the Office of the National Coordinator for Health Information Technology (ONC) and CMS regulation uses the new HL7 FHIR standards. In these standards, email is again not an acceptable form or method for conducting a prior authorization via an API.

<https://www.fhir.org/>

### *Prior Authorization Interoperability Rulemaking by CMS*

We urge the OIC to align the regulation with how the federal government is addressing electronic submission. The recent prior authorization interoperability rulemaking from the Centers for Medicare & Medicaid Services (CMS) is a good resource:

<https://www.federalregister.gov/documents/2022/12/13/2022-26479/medicare-and-medicaid-programs-patient-protection-and-affordable-care-act-advancing-interoperability>

CMS notes that the anticipated benefits of the Prior Authorization API are contingent upon providers using health IT products that can interact with the payer’s APIs. A parallel comparison may be made for electronic prior authorization. Because the information would need to be extracted from the email and manually entered into the system, the amount of manual work is equivalent to a request received via phone or fax.

### *CAQH Index report*

The Council for Affordable and Quality Health Care (CAQH) releases an annual report called the CAQH Index. This report includes data on health plan and provider adoption of HIPAA standard transactions. In that report they expressly call out email as not being considered “electronic”. Please see page 18 of the linked report: <https://www.caqh.org/sites/default/files/explorations/index/2021-caqh-index.pdf>

### ***Language recommendation***

We request that the OIC change the regulation to specify the following:

(e) For purposes of this subsection, the following definitions apply:

(i) An “electronic prior authorization request” is delivered via a two-way electronic communication system that meets the requirements of a secure online prior authorization process under WAC 284-43-2050 or an interoperable electronic process or prior authorization application programming interface under RCW 48.43.830.

(ii) A “non-electronic prior authorization request” is delivered through email, a phone call, a text message, a fax, U.S. mail, or any other method that does not meet the definition of an electronic prior authorization request.

### **Nature of medical topics creates a challenge with plain language requirement**

We understand that the OIC is incorporating the “plain, easily understandable language” requirement as set out in RCW 48.43.830 (1)(d). Thank you for not including a specific reading level that health carriers need to achieve. We do our best to make materials easy to understand; however, the name of a medication or the actual name of a procedure or a disease can raise the reading level significantly, even if the overall sentence structure is at a more basic level.

We ask that in enforcing this requirement, the OIC consider the health carrier’s efforts to keep the reading level simple while still conveying accurate medical information to enrollees.

We thank you for the opportunity to provide comments on this stakeholder draft. We look forward to our continued collaboration throughout this rulemaking process. Please do not hesitate to contact us with questions.

Sincerely,



**Merlene Converse**

Senior Regulatory Consultant

### **Kaiser Foundation Health Plan of the Northwest**

Government Relations

500 NE Multnomah Street, Suite 100

Portland, OR 97232

(503) 936-3580 (cell)

[Merlene.S.Converse@kp.org](mailto:Merlene.S.Converse@kp.org)