



Mike Kreidler- Insurance Commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R 2024-03**

CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS SUMMARY; RULE
DEVELOPMENT PROCESS; AND IMPLEMENTATION PLAN

Relating to the adoption of

Prior Authorization Modernization – Implementation of E2SHB 1357 (2023)

December 26, 2024

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Section 1: Introduction

Revised Code of Washington (RCW) 34.05.325(6) requires the Office of the Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption. The CES shall:

1. Identify the OIC’s reasons for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences; and
3. Summarize and respond to all comments received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the OIC’s reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

In 2023, the Legislature passed [E2SHB 1357](#) to modernize prior authorization processes, prevent delays in care, and improve health outcomes. To implement those objectives, the OIC proposed amendments to two Washington Administrative Code (WAC) provisions within [Chapter 284-43 Subchapter D](#). The adopted rule updates prior authorization time frames for health care services and prescription drugs and clarifies health plan applicability standards. The rule ensures that all affected entities understand their rights and obligations under the new law.

Section 3: Rule Development Process

The OIC filed the CR-101 for this rulemaking with the Washington State Register on May 21, 2024 (WSR 24-11-131). The comment period for the CR-101 closed on June 21, 2024. OIC received two comment letters on the CR-101.

OIC released a prepublication rule draft on September 16, 2024. The comment period for this draft closed on September 30, 2024. OIC received three comment letters on this draft.

OIC filed the proposed rule (CR-102) on November 5, 2024 (WSR 24-22-130). The comment period for the CR-102 closed on December 12, 2024. OIC received one comment letter on the CR-102 draft.

OIC held a public hearing on the proposed rule text on December 11, 2024. The hearing was administered by Joyce Brake, Policy and Rules Manager, as a virtual meeting. There was no testimony presented at the hearing.

OIC filed the final rule (CR-103) with the Code Reviser on December 27, 2024, and the rule will become effective on January 27, 2025.

Section 4: Differences Between Proposed and Final Rule

There are no differences between the proposed rule (CR-102) and the final rule (CR-103).

Section 5: Responsiveness Summary

OIC received a total of six comments regarding R 2024-03, inclusive of the CR-101, prepublication draft, and CR-102 rule stages. The following section of this CES summarizes the comments by topic. It then provides OIC's responses to the comments and whether changes were made in the rule language at any point in the rulemaking process.

The OIC received comments from:

1. Providence Health Plan
2. Washington State Medical Association
3. Cambia Health Solutions
4. Kaiser Permanente
5. Washington State Pharmacy Association
6. Coordinated Healthcare Corporation

| Comment | Response |
|---|---|
| General comments | |
| A commentor expressed general support for the proposed rule, stating that it will help reduce barriers to appropriate patient care, improve health outcomes, and reduce administrative expenses that increase the total cost of care in our state. Another commentor appreciated the OIC's effort to update the WACs related to prescription drug utilization management and prior authorization based on recent legislation. | Thank you for these comments. |
| WAC 284-43-2020 and WAC 284-43-2050 | |
| Two commentors appreciated the OIC defining electronic and non-electronic prior authorization requests in the proposed rule. The same two commentors also appreciated the WAC | Thank you for these comments. Regarding circumstances where the carrier needs additional information from a provider or facility to process a prior authorization request, the OIC amended the final rule |

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| <p>284-43-2020 and -2050 statutory citations and cross-references to clarify scope and avoid overlapping requirements.</p> <p>These commentors were concerned with the prepublication draft language outlining circumstances where the carrier needs additional information from a provider or facility to process a prior authorization request. The commentors questioned whether referencing timeframes in existing regulation conflict with the new statute.</p> | <p>language to reference RCW 48.43.830 for carrier decision time frames once the carrier has the necessary information needed to make a determination.</p> |
| <p>A commentor thanked the OIC for clarifying the scope of WAC 284-43-2020 but opined that it is unclear what prescription drug utilization management scenarios may fall under the timelines in WAC 284-43-2020.</p> | <p>Thank you for this comment. As stated in the final rule's WAC 284-43-2020(1), the section applies to "...prescription drug utilization management timelines...excluding prescription drug prior authorization timelines, which are covered in WAC 284-43-2050..." Therefore, the newly amended WAC 284-43-2020 applies to any prescription drug utilization management timelines other than prior authorization timelines. The final rule's WAC 284-43-2020(2) references prescription drug utilization management and utilization review definitions that include concurrent and retrospective medical necessity assessments.</p> |
| <p>RCW 48.43.830(2) – Application programming interface (API) requirements</p> | |
| <p>A commentor requested a three-year runway to implement the E2SHB 1357 API technical specifications for prior authorization. The commentor added that the Centers for Medicare and Medicaid Services (CMS) Interoperability and Prior Authorization Final Rule was finalized in February of 2024, and that only then could implementation plans for Washington's more stringent API requirements begin. According to the commentor, software development vendors cannot support either of Washington's January 1, 2026 and</p> | <p>While the OIC appreciates this comment, our agency cannot change the Legislature's clearly defined API implementation timelines and applicability standards.</p> |

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| January 1, 2027 API implementation dates. Alternatively, the commentor requested a safe harbor from the state API requirements for Washington health plans with less than one percent of the state's commercial market. | |
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Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

As described below, implementation of the rule will occur through numerous activities at the OIC. The Legal Division's investigations unit will rely on this rule when determining whether to initiate an investigation of prior authorization practices. The Legal Division will rely upon the rule in determining whether enforcement action is appropriate. The Rates, Forms, and Provider Networks Division will rely on this rule in the carrier filing process. The Company Supervision Division will rely on the rule in overseeing carrier prior authorization determinations. The Consumer Protection Division will continue to respond to consumer complaints related to prior authorization determinations. Through these activities, OIC will monitor the impact of rule implementation.

B. How the Agency intends to inform and educate affected persons about the rule.

OIC Policy staff will distribute the final rule and this Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC's standard rulemaking listserv and emailing the documents to interested parties. The OIC Policy Division will post the CR-103 documents on the OIC's website.

| Type of Inquiry | Division |
|----------------------------|---------------------------|
| Consumer assistance | Consumer Advocacy Program |
| Rule content | Policy Division |
| Authority for rules | Legal Division |
| Enforcement of rule | Legal Division |

C. How the Agency intends to promote and assist voluntary compliance for this rule.

OIC will respond to inquiries from entities implementing prior authorization timelines and standards. The OIC will provide these entities with an opportunity to fully understand and comply with these rules. OIC also stands ready to meet

with organizations to respond to questions and share perspectives on rule implementation.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

The Legislature passed [E2SHB 1357](#) to modernize prior authorization processes, prevent delays in care, and improve health outcomes. The adopted rule updates prior authorization time frames for health care services and prescription drugs and clarifies health plan applicability standards. The rule ensures that all affected entities understand their rights and obligations under the new law.

OIC will continue to monitor prior authorization time frames and processes through consumer complaints and will review the outcome of any prior authorization investigations undertaken pursuant to this rule.

Appendix A

CR-102 Public Hearing Summary

| Summarizing Memorandum |
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| To: Mike Kreidler Insurance Commissioner From: Joyce Brake, Policy and Rules Manager Presiding Official, Hearing on Rulemaking |
| Matter No. R 2024-03 |
| Topic of Rulemaking: Prior Authorization Modernization – Implementation of E2SHB 1357 (2023) |
| <p>This memorandum summarizes the hearing on the above-named rulemaking, held on December 11, 2024, at 10:00 am Pacific Time Zone on Zoom, over which I presided in your stead.</p> <p>The following agency personnel were present:</p> <ul style="list-style-type: none">• Joyce Brake• Delika Steele• Tracy Thornburg• Jennifer Kreidler• Kristen Reed• Wendy Conway• Ron Pastuch• Heather Shimoji• Stephanie Walker <p>Hearing attendees:</p> <ul style="list-style-type: none">• Denyse Bayer• Cheryl Sullivan• Storie Madrid• Beau Reitz• Allison Lee-Shaner• Pam Ventgen• Brittany Rowlett• Vanny Cao• Amy Koester |

- Hilary Dempsey
- Merlene Converse
- Gwenna McGrath
- Ashock Shimoji-Krishnan
- Danielle Harris
- Melissa Saiz
- Tamara Rancore
- Julie Schulz
- Courtney Taylor
- Emily Nudelman
- Gina Allan
- Katherine Therrien
- Melanie Anderson
- Michelle Pfarr
- Katrina Jackson
- Dedi Little
- Hawa Elias
- Tina Wang
- Samuel Wilcoxon
- Aruna Bhuta
- Tammy Herandy

There was no public testimony at the hearing.

The hearing was adjourned.

SIGNED this 26th day of December, 2024
Joyce Brake
Presiding Official