WSPA
WASHINGTON STATE PHARMACY ASSOCIATION

August 4, 2025

Rules Coordinator
Washington State Office of Insurance Commissioner
302 Sid Snyder Ave SW
Olympia, WA 98504

Re: Possible rulemaking pertaining to the implementation of E2SSB 5213 Health Care Benefit Managers (Chapter 242, Laws of 2024)

Dear OIC Rules Coordinator:

On behalf of the members of the Washington State Pharmacy Association (WSPA), we respectfully urge the Office of the Insurance Commissioner (OIC) to initiate rulemaking related to the implementation of E2SSB 5213.

Pharmacy professionals in Washington have struggled under the weight of unfair and deceptive practices by pharmacy benefit managers (PBMs) operating in our state. These challenges impede patient care and create pharmacy deserts in Washington State. For over a decade, WSPA has worked to advance legislation that would bring oversight to this largely unregulated sector. Despite repeated efforts, PBMs have continued to operate with little to no transparency or accountability.

We were proud to support and help develop E2SSB 5213, which we believe is a significant step forward in addressing these longstanding concerns. This legislation provides an opportunity to introduce meaningful PBM oversight, and we appreciate the OIC's role in its implementation.

We also want to recognize the OIC's efforts thus far, particularly in the drafting and adoption of the CR-103P regarding health care benefit managers (HCBM). However, we believe additional action is necessary to fully realize the intent of E2SSB 5213 and to ensure its effectiveness.

Our members continue to report noncompliance by PBMs with existing laws. Our members experience 4-6 month backlogs in addressing PBM non-compliance complaints. Under 48.200.030 the Commissioner can increase fees to the PBMs to fund enforcement. We urge the OIC to expand staff and resources dedicated to enforcement and oversight of PBMs to ensure the law is being followed and to hold these entities accountable.

The pharmacy reimbursement appeals process remains a significant administrative burden—especially for small, independent pharmacies operating on razor-thin margins. The process is onerous, with little recourse or accountability on the part of the PBMs. As a result, many pharmacies struggle to remain viable while navigating these challenges.

Additionally, we respectfully suggest that the OIC has enforcement authority that could be more fully utilized to address these concerns. Below are several examples and proposed solutions that we believe warrant consideration during this next phase of rulemaking.

New Rule Making to Consider

WAC 284-180-505 Price adjustments following upheld appeal.
Currently, each plan handles payment adjustments differently for approved appeals. Some carriers issue payment corrections for the claim that was appealed, while others adjust all past payments made for that patient for that medication since the claim was filed, and others only adjust the cost of that medication for claims going forward after the appeal is upheld. Therefore, OIC should clarify that reimbursement adjustments resulting from a successful appeal should apply to all claims for the affected patient, and preferably to all claims at that pharmacy for that medication, both retrospectively to the date the appeal was filed and for 90 days going forward.

Additionally, **this requirement should be incorporated into WAC 284-180-522(3)** to ensure **that** tier 2 appeals **r**esult in consistent and fair reimbursement practices.

WAC 248-180-517 Predetermined, multisource drug
In this section, OIC should remove references to predetermined and multisource drugs because starting in January 2026 pharmacies may appeal all underpaid medication claims.

<u>Expanded Enforcement Activity Needed</u>

WAC 284-180-501 Parity of Pharmacy Reimbursement
We suggest OIC complete an audit of the PBMs for non-compliance with paying owned and affiliated pharmacies differently than they pay Washington State pharmacies. We believe this isn't being done by the PBMs. In 2024, 3-Axis Advisors completed a Washington State study of pharmacy data and employer health plan prescription data and compared payments. There was a large difference between community pharmacies and mail order pharmacies. While this data was largely ERISA plan data, we believe the payment discrepancy exists in commercial fully insured group plans as well.

WAC 284-180-507 3(a) and (12) – Accurate contact information for appeals
It is imperative that PBMs provide accurate and up-to-date contact information. Currently, the contact information available is frequently outdated, inaccurate, or unresponsive. We recommend that the **language in (3)(b) and (12)** be included in the **registration form for HCBMs/PBMs**, and that this information be **posted on the OIC website** to ensure that pharmacies, consumers and OIC staff can access **current and accurate contact details**.

The OIC already requires PBMs, at the time of registration, to provide the **name and contact information of the individual responsible for compliance with state and federal laws.** This change would **reduce the administrative burden on pharmacies**, who are currently asked to provide this information during complaint or reimbursement appeal filings, despite it being the PBM's responsibility.

WAC 284-180-507 (4) – Proof for an appeal
OIC permits pharmacies to submit a statement of their process for selecting the lowest cost medication available as proof of the need for an appeal. Some PBMs still require an invoice to be submitted for tier 1 appeals, and will deny claims automatically if this isn't provided. More education to PBMs is needed to clarify that a statement must be accepted. As stated before, we are encouraging pharmacies to provide this WAC to the PBMs and to file complaints for non-compliance.

WAC 284-180-507 (8)(a) and (8)(b) – Denial of appeals.
OIC rule states that when a claim is denied the PBM must provide the medication **National Drug Code**

(NDC) or the **source for denied appeals**. The PBMs are failing to provide this information to a pharmacy for a denied appeal. Additionally, the PBM often simply does not respond to an appeal which means the appeal is considered denied, but never provides the basis of the denial to the pharmacy.

Similarly, 507 (8)(b) requires PBMs to prove that a claim is covered by ERISA if that was the reason for denial of an appeal. They do not currently have a process to demonstrate this to the pharmacies as a reason for the denial. We encourage the OIC to require the PBMs follow the appeals process outlined in WAC 284-180-507.

RCW 48.200.210 (3) and RCW 48.200.220 (11) – Clerical Errors
PBMs routinely perform desk audits of pharmacies, and charge pharmacies fees for clerical errors that do not financially impact the pharmacy. An example is when a pharmacy may list a drug as a 2 day supply (the dose is taken 12 hours apart), and the PBM wants that billed as a one day supply – they then charge the pharmacy a penalty of maybe $10 for this error. (But the pharmacy only dispensed the medication one time to a patient appropriately.) This is just one of many examples of this pattern. WSPA has encouraged pharmacies to use this law to fight back and file complaints to OIC to improve enforcement.

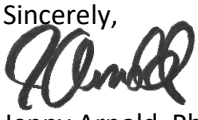
RCW 48.200.280 (h) – Deceptive and misleading information
Often, PBMs send letters to patients incorrectly informing them that the pharmacy they are currently using will no longer be in the PBMs network, and directing them to use a different pharmacy, one that is often PBM owned or affiliated. This occurs when the patient's routine pharmacy is still in network and leads to patient chaos and confusion as the patient incorrectly assumes they must change pharmacies. These false and mis-leading letters are detrimental to patient care, and PBMs should be held to account for their distribution to patients.

RCW 48.200.280 (l) – Fees
Some PBMs continue to charge pharmacies credentialing or enrollment fees annually. WSPA continues to encourage pharmacies to file complaints to OIC for non-compliance with the law.

The WSPA members were very encouraged by the enforcement potential available as a result of RCW 48.200 following passage of ESSB 5213 in 2024. Our members encourage strong OIC enforcement of these provisions to ensure PBM compliance, reduce inappropriate burdens on pharmacies, and protect against unlawful fees and denials. This will give pharmacies the necessary relief they need to keep their doors open and best serve patients. E2SSB 5213 is a strong law that will provide important transparency and regulation over PBMs who operate in Washington State.

Thank you for your continued leadership and attention to this critical matter. We look forward to working collaboratively with the OIC to ensure the fair and effective implementation of E2SSB 5213, and to protect patient access to pharmacy services across Washington. We are happy to provide more examples and clarity to staff as needed to help your process.

Sincerely,



Jenny Arnold, PharmD, BCPS
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