October 3, 2025

Commissioner Patty Kuderer
Washington State Officer of the Insurance Commissioner
302 Sid Snyder Ave., SW
Olympia, WA 98504
EMAIL: rulescoordinator@oic.wa.gov

SENT VIA EMAIL

Re: R-2025-11 – Health Care Benefit Managers – First Prepublication Draft

Dear Commissioner Kuderer:

I write on behalf of Pharmaceutical Care Management Association ("PCMA") in response to the Washington State Office of the Insurance Commissioner's ("OIC") First Prepublication Draft ("Draft") for health care benefit managers ("HCBMs"), R-2025-11. Generally, this Draft would amend state law concerning the business practices of HCBMs, related to the 2024 Legislative Session enactment of Engrossed Second Substitute Senate Bill ("E2SSB") 5213 (Chapter 242, Laws of 2024). Currently, PCMA has several concerns with the Draft, along with requests for changes to be made to the Draft, as well as questions about the language in the Draft.

Additionally, PCMA and its member companies would like to express our concerns regarding the OIC's short timeline for public comments regarding the Draft. The Draft was published by the OIC on September 24, 2025. The public comment period for the Draft closes today – October 3, 2025. As the OIC is aware, last year, the agency conducted expensive rulemaking pertaining to HCBMs and the language of the underlying statute – E2SSB 5213 from 2024. PCMA commented on the 2024 rulemaking for HCBMs during the then-relevant public comment periods. However, the First Prepublication Draft for the 2024 HCBM rulemaking (*see* R 2024-02), was published on July 12, 2024, with a public comment period closing on July 26, 2024. This is a difference of **at least five calendar days** fewer for the public comment period on this First Prepublication Draft of 2025.

Therefore, PCMA and its member companies respectfully request that the OIC both justify is shorter timeframe for public comment regarding this same rulemaking issue in 2025 versus 2024, as well as the opportunity for PCMA to meet with the OIC regarding both our general and specific concerns related to the Draft.

For background, PCMA is the national trade association representing pharmacy benefit managers ("PBMs"). PCMA's PBM member companies administer drug benefits for more than 275 million Americans, including most Indianans, who have health insurance through employer-sponsored health plans, including those organized under the federal Employee Retirement and Income Security Act ("ERISA") of 1974, commercial health plans, union plans, Medicare Part D plans, managed Medicaid plans, the state employee health plan, and others.

The ERISA benefit plans with which PCMA's members contract include both insured and self-funded benefit plans sponsored by businesses/employers and labor unions. PBMs use a variety

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of benefit management tools to help these plans provide high quality, cost-effective prescription drug coverage to plan beneficiaries.

Below is a brief outline of PCMA's concerns, requests for changes, and questions for the OIC.

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WAC 284-180-120 Applicability and scope.

(3)

In this provision of the Draft, the OIC seeks to amend existing law in the Washington Administrative Code ("WAC"). Specifically, the OIC seeks to include the term "exclusively," as it refers to the applicability and scope of the Draft. Here, the inclusion of this term would further define the parameters as to what entities the Draft does not apply.

PCMA and its member companies respectfully request that the term "exclusively" be explained by the OIC regarding its inclusion in this provision of the Draft. The term's inclusion fails to reflect the fact that a PBM contracts with various entities, including those that are in scope, as well as out of scope, of both the Draft and the underlying statute. Upon an initial review, it appears that by including "exclusively" would mean the Draft would apply to every PBM. This would include scenarios when a PBM performs services for types of health insurance over which the OIC has no regulatory authority, such as the federal Medicare or Medicaid programs, or even those self-funded groups that have not opted in to the OIC oversight – per the language of the underlying statute.

WAC 284-180-130 Definitions.

(4) "Contract price"

This provision of the Draft would add a new definition for "contract price" to existing state law. This is concerning, as this new definition is not supported by the underlying statute, i.e., the language of E2SSB 5213 from 2024.

Additionally, PCMA and its members question the intent of this provisions. For example, does the OIC believe that PBMs list or establish the contract prices for all drugs in any contracts? Generally, when a PBM contracts with a pharmacy, there is a reimbursement mechanism for brand drugs – e.g., average wholesale price ("AWP") minus 10%, or multi-source drugs – e.g., maximum allowable cost ("MAC") plus a dispensing fee. There is generally no language in a PBM contract with a pharmacy that details reimbursement for each specific drug, as drug prices change daily.

Next, PCMA and its members are concerned about the second sentence in this Draft provision, pertaining to what is "inclusive" a part of this definition. This sentence is inconsistent with the underlying statute. Furthermore, it is unnecessary. PBMs generally do not know what post-sale discounts are available. Thus, PBMs, acting as HCBMs per the Draft, should not be held accountable for taking into consideration something we do not know.

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PCMA and its member companies respectfully request that both our questions, as well as our requests for changes regarding this provision, be answered and honored.

(9) "Drug" or "prescription drug"

This Draft provision would add definitions for both "drug," as well as "prescription drug." However, definitions for these terms already exist in state law. Also, there is no mention of these terms, nor the OIC's authority to define them via the Draft, in the underlying statute.

PCMA and its member companies respectfully request that the OIC provide both its justification and authority to define these terms via the Draft, as well as the removal of the terms from the Draft.

(18) "Local network pharmacy"

This provision in the Draft would add the definition of "local network pharmacy" to state law. However, this definition is unsupported by the underlying statute. In fact, the language of E2SSB 5213 from 2024 refers to network pharmacies without any mention of location. Further, the term "reasonable proximity" as used in this new definition is neither defined in the Draft, nor supported by the language of the underlying statute.

Also not mentioned in the underlying statute, is making network pharmacies available to individuals at their business location. This makes no sense for people who work out-of-state, nor is this a distinction made in any network adequacy requirements. Thus, PCMA and its member companies respectfully request the removal of this provision from the Draft.

(25) "Other conditions"

This provision of the Draft would define "other conditions," including the phrase "convenience of receiving a covered prescription drug." To our knowledge, there is no precedence for such a term or scenario in the underlying statute, other existing state law, nor in the laws of any other state.

The provision at issue also addressed the frequency of prescription drug refills. In practice, the language in this provision would prohibit PBMs as categorized as HCBMs (i.e., payors) from declining to fill unjustified early refills, including those for opioids.

The duration of refills means extended network quantities at retail. This means PBMs will not be able to share any potential cost-savings from using some pharmacies or extended networks, with enrollees. The restriction on this type of provider is not supported nor even mentioned in the underlying statute.

Therefore, PCMA and its member companies respectfully request that this provision be removed from the Draft.

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(33) "Require or coerce"

The Draft defines the new term "require or coerce" regarding PBMs and their enrollees. Included is also language prohibiting a PBM from certain communications to enrollees regarding pharmacy options.

At the outset, this language is unsupported by the underlying statute. It goes far beyond what is mentioned in the underlying statute, as well as the OIC's authority as a state agency. What is more, the language of subdivisions (a) – (c) of this Draft provision raises First Amendment concerns. The OIC does not have the authority to restrict the type of speech at issue. Essentially, this language may be construed as an unconstitutional infringement on free speech.

There are also issues with the language of subdivision (a) regarding PBM communication to an enrollee "in a manner that primarily or solely promotes a network pharmacy," owned by or affiliated with a PBM when other network pharmacies are available. At present, this subdivision fails to recognize that specialty pharmacies would need to be carved out when referring to "primarily or solely," as specialty networks are very small and often PBM-affiliated pharmacies – and are the only pharmacies in the country that are generally allowed to dispense limited distribution drugs.

PCMA and its member companies respectfully request that the entirety of this Draft provision be removed.

(37) "Unusable condition"

This new definition in the Draft refers to prescription drugs delivered to an enrollee that are rendered unusable either due to ineffectiveness or being unsafe for consumption. However, the language included here does not consider the fact that it makes more sense for such a determination to be made by a pharmacist in charge at the dispensing pharmacy for the prescription drug at issue.

Also, the entirety of the language in this Draft provision is far outside the scope of the underlying statute. And its ramifications will be felt beyond the affected PBMs or HCBMs, as all pharmacies operating in Washington are likely to be negatively impacted.

PCMA and its member companies respectfully request that this Draft provision be removed, because of the aforementioned reasons.

WAC 284-180-220 Health care benefit manager registration.

(5)

This new provision, as included in the Draft, would change existing state law regarding what entities must register with the OIC to provide PBM services. What's concerning is that upon an initial review, this language appears to apply to third-party administrators ("TPA") as entities required to register. If this is the intent of the OIC, then such language goes beyond the scope of the underlying statute.

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Pending a response from the OIC regarding the agency's intent with this new Draft language, PCMA and its member companies respectfully request that this language be removed from the Draft, if the intent is to include TPAs within the scope of the Draft.

WAC 284-180-465 Self-funded group health plan opt-in.

(5)

Included in this Draft provision is the statement that the language at issue does not relieve a PBM of its duty to register as an HCBM:

> *…if it also provides health care benefit management services on behalf of a carrier, employee benefits program, or medicaid managed care organization.*

This language appears to be an acknowledgment by the OIC that PBMs provide services to a variety of health care payors, some of which may not be within the agency's purview. The language at issue also seems to conflict with the "exclusively" language in the Draft via subdivision (3) of the applicability and scope section – WAC 284-180-120.

PCMA and its member companies respectfully request clarification from the OIC regarding its intent for this provision of the Draft.

WAC 284-180-501 Pharmacy reimbursement.

(2)

This Draft provision prohibits a PBM from reimbursing a network pharmacy at an amount less than the "contract price" between the PBM and the carrier, insurer, third-party payor, or prescription drug purchasing consortium the PBM has contracted with for a prescription drug, "calculated on a per unit basis."

This language seems to perpetuate a misunderstanding that PBMs have contract prices for each specific drug. Rather, PBMs generally have reimbursement mechanisms for brand drugs and a different reimbursement mechanism for multisource drugs that are based on a formula reflecting the fact that drug prices change daily.

PCMA and its member companies respectfully request that the OIC explain its intent with regard to this Draft provision, so that industry can better understand the purpose of said provision.

SUBCHAPTER F – ENROLLEES' ACCESS TO NETWORK PHARMACIES

WAC 284-180-550 Enrollee rights and PBM obligations – Mail order and retail pharmacies.

Generally, much of the language included in the Draft provisions of this new section is entirely unsupported by the underlying statute. Moreover, the OIC does not have the authority as a state

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agency to unilaterally create state law that enacts new public policy without first going through the proper legislative process.

(1) "Issued"

This Draft provision states that "issued" refers to "ordered by a prescribing health care provider." This language appears to include a prescribing pharmacist. Generally, PBMs are not opposed to a pharmacist prescribing medication. However, as worded in the current Draft, this provision in the new Subchapter F is ambiguous.

PCMA and its member companies respectfully request that the OIC provide additional clarity regarding its intent for this new provision in the Draft.

(2) "New prescription"

This Draft definition of "new prescription" is not something that is likely within the purview of the OIC, rather it would be more appropriately defined via the legislative process and fall under the purview of a state regulatory entity such as the Washington State Department of Health's ("DOH") Pharmacy Commission. And as defined, the Draft appears to not comprehend the nuances of what a "new prescription" actually is.

For example, a "new prescription" could be interpreted as a continuation of a previously prescribed therapy for a patient-enrollee. In other words, an individual may have a new prescription for Lipitor, but the prescription is only new this year – as the individual had been taking the drug five years prior. Also, this new Draft definition appears to apply only to mail-order pharmacies. Therefore, this current Draft language may splinter drug delivery choices for Washingtonians – thus preventing patients from properly receiving their medications.

PCMA and its member companies respectfully request that this provision be removed from the Draft.

(3)

This new language in the Draft restricts the type of pharmacies that enrollees are allowed to choose, by prohibiting the dispending of drugs via mail-order or common carrier in certain instances. That said, this provision does not align with the underlying statute, nor its legislative intent. The purpose of the language of the underlying statute, including throughout its legislative process in 2024, was to allow enrollees to choose to use a certain pharmacy. However, the legislative intent was to require that PBMs allow for said enrollee choice to occur, not to require that PBMs ensure such a choice will be made.

Perhaps even more concerning, the OIC's Draft states that a network pharmacy not primarily engaged in dispensing prescription drugs through the mail or common carrier, is one that:

> *…receives less than 50 percent of the toral value of its annual prescription drug reimbursements, excluding dispensing fees, from mail order prescriptions.*

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The inclusion of this numerical threshold is entirely out-of-scope of the OIC's authority, as well as unsupported by the underlying statute. Language including such a threshold previously failed to advance during the state's legislative process, as PCMA and its member companies were successful in making the case to legislators during the state's 2024 Legislative Session that PBMs – acting as HCBMs, along with other health care payors – are the appropriate entities to determine if a pharmacy is mail-service.

With all that said, PCMA and its member companies respectfully request that this provision be removed from the Draft.

(4)

This Draft provision would mandate that PBMs received a "written affirmative authorization" in order to provide a prescription drug to an enrollee via mail order. There is no support for this requirement in the underlying statute. During the legislative process in 2024, this issue was discussed.

And the reason that a "written affirmative authorization" was not required in the language of the underlying statute is because PCMA and its member companies successfully made the case to legislators that the federal Centers for Medicare and Medicaid Services ("CMS") allow verbal authorization in such scenarios with Medicare Part D enrollees, including via telephone. For the OIC to not at the very least allow for verbal authorization is to disenfranchise and put the health Washingtonians at risk who may have an inability to provide a "written affirmative authorization."

There is also the often-occurring scenario that when a prescriber sends a prescription to a mail-order pharmacy, it was done at the request of the enrollee. Otherwise, how would the prescriber even know what mail order pharmacy to send it to? At present, this Draft provision is going to further burden enrollees, especially senior citizens.

PCMA and its member companies respectfully request that this provision be removed from the Draft.

(5)

This provision as it appears in the Draft requires that PBMs allow enrollees who use mail order pharmacies to use local network pharmacies in certain scenarios. Included in this provision, is the allowance for using local mail order pharmacies if a prescription drug arrives to the enrollee in an "unusable condition," a term defined elsewhere in the Draft. As previously mentioned, the determination of a prescription drug being in an "unusable condition," should be reserved for the pharmacist in charge at the dispensing pharmacy at issue.

Further, this Draft provision requires that enrollees have "easy and timely access" for pharmacist counseling regarding a prescription drug. The Draft defines the term "easy and timely access" as meaning:

> *…the ability for an enrollee to receive in-person, video or telephonic assistance in real time from an individual pharmacist if the enrollee requests consultation. To fulfill this requirement the PBM must make in-person, video or telephonic assistance available*

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from, at a minimum, 8am – 5pm pacific time every day, including weekends and holidays.

This definition, as well as the entirety of the language in this provision of the Draft, in unsupported by the underlying statute. Also, the establishment of such a public policy would be holding PBMs to a different standard than other entities, and possibly an illegal case of the OIC picking winners and losers in the market.

PCMA and its member companies respectfully request that the OIC remove this provision from the Draft.

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In sum, PCMA's respectfully requests that the OIC adhere to the language of the underlying statute, as well as its rulemaking authority as a state regulatory entity. We further urge the OIC to make changes to the Draft in order to ensure the integrity of all of the processes at issue. And we hope that the OIC will help us understand the intent of certain provisions contained within the Draft by answering our questions.

PCMA looks forward to working with the OIC on these issues. Again, we respectfully request both a justification for the short public comment period on the Draft – especially in light of the previous longer comment periods offered during last year's rulemaking on HCBMs, as well as the opportunity to meet with the OIC on all of the issues outlined in this comment letter.

Please feel free to contact myself or my colleague, Jonathan Buxton (jbuxton@pcmanet.org), PCMA's Senior Director of State Affairs, for further discussion. We look forward to your response.

Sincerely,

Peter Fjelstad

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