



December 10, 2025

Commissioner Patty Kuderer  
Washington State Office of the Insurance Commissioner  
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Olympia, WA 98504  
EMAIL: [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov)

**SENT VIA EMAIL**

**Re: R-2025-11 – Health Care Benefit Managers – Proposed Rule**

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”) proposed rulemaking language (“Proposed Rule”) for health care benefit managers (“HCBMs”), R-2025-11. Generally, this Proposed Rule 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). PCMA’s comments here follow previous comments on the OIC’s First Prepublication Draft (“Draft”) rulemaking language for HCBMs, submitted on October 3, 2025.

At the outset, PCMA would like to thank the OIC for accepting some of our requests for language changes between the Draft and the Proposed Rule. We hope that the OIC understands that many of the requests we made in our previous comments are because our member companies strive for compliance. However, as may sometimes happen, industry can be best situated to help regulators understand the best manner in which to help industry operationalize the law in order to achieve compliance.

Next, these comments comprise of those issues and concerns which are currently PCMA and its member companies’ highest priorities. While some of the language for provisions we raised issues on in our comments on the Draft have changed, we still have general concerns over those provisions, regardless of the changes to them made in the Proposed Rule.

For background, PCMA is the national trade association representing pharmacy benefit managers (“PBMs”). PCMA’s PBM member companies administer drug benefits for more than 289 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 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 regarding the Proposed Rule.

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### **WAC 284-180-130 Definitions**

#### **(18) “Local network pharmacy”**

This provision in the Proposed Rule 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 (i.e., the language of the underlying statute) from 2024 does not mention location and describes a pharmacy network as pharmacies located in the state **OR** licensed **AND** contracted with a PBM. Pharmacy networks are designed to accommodate enrollees’ needs throughout the United States including instances such as travel, or temporary relocation (e.g., an enrollee is in college or has a second home located outside State of Washington).

Further, the term “reasonable proximity” as used in this new definition is neither defined in the Proposed Rule, nor supported by the language of the underlying statute.

Thus, as we did in our comments on the Draft, PCMA and its member companies respectfully request the removal of this definition from the Proposed Rule.

#### **(25) “Other conditions”**

The language of the underlying statute notes same conditions related to utilization review, fees, and days allowances for all network pharmacies including mail order pharmacies. However, in the Proposed Rule, this definition gets into concepts not contemplated by or rejected by the Washington Legislature or that may jeopardize patient safety.

In the Proposed Rule, other conditions includes both the frequency and duration of refills. In practice, the language in this provision would prohibit the rejection of unjustified early refills, including those for opioids which have proven lethal consequences.

The duration of refills is already addressed in days’ allowance. The duration of refills means extended network quantities at retail. This means PBMs will not be able to share any potential cost-savings with enrollees who choose to use extended network pharmacies. The restriction on duration of refills is not supported by nor even mentioned in the underlying statute.

This provision of the Proposed Rule 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.

Prohibitions and/or restrictions of the type of the prescribing provider(s) were not contemplated during the public debate over the language contained in the underlying statute. Moreover, restrictions on preparation or dispensing of medicines were also not contemplated and are



therefore outside scope of the language of the statute. These provisions of the Proposed Rule are unique legislative concepts (e.g., site of care, white-bagging). None of these concepts were part of the public debate over the underlying statute when it was going through the legislative process in 2024. And including such language is beyond the authority of the OIC to enact via unilateral state agency rulemaking.

Therefore, PCMA and its member companies respectfully request that this definition be removed from the Proposed Rule, as we did for the Draft.

### **(33) “Require or coerce”**

This definition in the Proposed Rule has changed from the definition in the Draft. For that, PCMA and its member companies thank the OIC. However, we still have concerns over how the term “require or coerce” is defined in the Proposed Rule.

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. Also, the language does not adequately address specialty pharmacy networks which may only include PBM-owned pharmacies in the network.

Thus, PCMA and its member companies respectfully request that this definition be stricken from the Proposed Rule. However, in an effort to be proactive and helpful to the OIC, we suggest the following language be added to this definition:

*...when a network pharmacy that is not owned by or affiliated with a PBM is providing the same network services and is also available to the covered person.*

### **(37) “Unusable condition”**

This new definition in the Proposed Rule 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 Proposed Rule 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. And, at present, this definition does not specify the entity determining usability. This determination should be made by the pharmacist-in-charge of the dispensing pharmacy.

Thus, PCMA and its member companies respectfully request that as we did in our comments on the Draft, this Proposed provision be removed, because of the aforementioned reasons. However, again in an effort to be both proactive and helpful to the OIC, we suggest the following language be added to the definition:



*“unusable condition: means a condition determined by the pharmacist in charge of the dispensing pharmacy in which a prescription drug arrives to an enrollee in a manner that renders the prescription drug ineffective or unsafe for the enrollee to use as prescribed.*

#### **WAC 284-180-501 Pharmacy reimbursement.**

**(2)**

This Proposed Rule provision has changed since the Draft version. For this, PCMA and its member companies thank the OIC. However, the current language remains concerning.

As the OIC knows, the language in this 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.

And it is important for the OIC to continue to allow post-sale adjustments for performance-based contracts, audits, or findings of fraud, waste, and/or abuse (“FWA”).

PCMA and its member companies respectfully request that the OIC remove this provision from the Proposed Rule. While the OIC’s intent with changing this provision from the Draft may have been to try and explain what the agency is intending, the Proposed Rule language does not resolve the issues presented.

#### **WAC 284-180-507 Appeals by network pharmacies to HCBMs who provide PBM services.**

This section was not in the Draft and is new to the Proposed Rule. Below are PCMA comments on this new section of the Proposed Rule:

**(4)**

This provision sets forth a process in a situation where a PBM must reconsider the reimbursement amount. It requires that a PBM allows the network pharmacy at issue, or its representatives, the opportunity to submit information regarding the reconsideration.

However, in order to ensure integrity in the appeals process, PCMA and its member companies respectfully request that the OIC include language in this provision regarding the documents a network pharmacy is allowed to submit that provides guardrails. We believe the best way to do this is to include language stating that regarding the information submitted, it must include the net amount that the network pharmacy paid, “on the date of the claim or claims that are subject to the appeal” to the supplier of the drug.

**(7)**

The new language in this provision requires a PBM to uphold the appeal of a network pharmacy with fewer than 15 retail outlets within the State of Washington – if the pharmacy at issue demonstrates that it is unable to purchase a therapeutically equivalent interchangeable product from a supplier also doing business in the State of Washington at the PBM’s list price.

PCMA and its member companies do not understand the intent of this language. As is, it appears to suggest that PBMs set the prices for prescription drugs. This is untrue. Pharmaceutical manufacturers set the prices for their products, which may then become prescription drugs, if prescribed to a patient.

Therefore, PCMA and its member companies respectfully request that this provision be changed to reflect the fact that pharmaceutical manufacturers actually set the prices of their products. This can be done by changing the language in this provision using a PBM’s list price, to “at the pharmaceutical manufacturer’s list price.”

**(9)**

The language in this new provision speaks of the scenario in which a PBM upholds a network pharmacy’s appeal. It requires that in such a scenario, a PBM must make a reasonable adjustment no later than one day after the date of the appeal determination.

However, this provision also states that the OIC will presume that a reasonable adjustment be applied prospectively for a period of at least 90 days from the date of an upheld appeal is not a knowing or willful violation of existing statute.

Overall, the language of this provision, particularly the 90-day prospective adjustment period, does not recognize the real-world fact that drug prices change daily. We seek clarification of the 90-day prospective adjustment period which does not account for frequent drug price changes.

Because of this issue, PCMA and its member companies respectfully request that the 90-day prospective adjustment period be stricken from the Proposed Rule.

**(12)**

The language of this new provision requires that PBMs identify an employee within their organization to act as a single point of contact for appeals – including all of the individual employee’s contact information.

While PCMA and its member companies understand the desire to have a single point of contact at a PBM to contact regarding an appeal, this language again does not recognize the real-world fact that private industry experiences employee turnover. For this reason, PCMA and its member companies respectfully request that this provision be changed in order to require a single/centralized email address for appeals.

**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 Proposed Rule provisions of this new section is entirely unsupported by the underlying statute. Moreover, the OIC does not have the authority as a state agency to unilaterally create state law that enacts new public policy without first going through the proper legislative process.

**(2) “New prescription”**

This Proposed Rule definition of “new prescription” is not something that is likely within the purview of the OIC – nor was the previous definition in the Draft, 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 Proposed Rule definition still appears to not comprehend the nuances of what a “new prescription” actually is.

PCMA and its member companies respectfully request that this provision be removed from the Proposed Rule. Alternatively, rather than trying to define “new prescription,” the Proposed Rule could be modified to read “(2)(a) For purposes of this section, “new prescription” excludes refills or continuations of existing prescriptions.

**(3)**

This provision in the Proposed Rule remains unchanged from the Draft language. It restricts the type of pharmacies that enrollees are allowed to choose, by prohibiting the dispensing 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 Proposed Rule still 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 total value of its annual prescription drug reimbursements, excluding dispensing fees, from mail order prescriptions.*

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 Proposed Rule, as we did for the Draft.

**(4)**

This Proposed Rule provision has changed since the Draft. We thank the OIC for making said changes. However, as is, it would mandate that PBMs receive an “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.

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, we believe that this Proposed Rule provision is going to further burden enrollees, especially senior citizens.

PCMA and its member companies respectfully request that this provision be removed from the Proposed Rule, as we did for the Draft.

**(5)**

This provision as it appears in the Proposed Rule 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 Proposed Rule. As previously mentioned in these comments, as well as in our comments on the Draft, 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 Proposed Rule provision requires that enrollees have “easy and timely access” for pharmacist counseling regarding a prescription drug. The Proposed Rule defines the term “easy and timely access” as meaning that:

*...pharmacist counseling is available to the patient by phone from 9:00 a.m. to 5:00 p.m. Pacific time every date except holidays, at a minimum, and that this phone number and other pharmacist counseling instructions are made available to the patient and prominently displayed on the pharmacy benefit manager's website.*

This definition, as well as the entirety of the language in this provision of the Proposed Rule – even though changed from the language of the Draft – is 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.

With all that said, PCMA and its member companies respectfully request that the OIC remove this provision from the Proposed Rule.

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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 Proposed Rule 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 Proposed Rule by answering our questions.

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

Sincerely,

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