

## F- 14 Concise Explanatory Statement

Short Form for Simple Rule making

### Concise Explanatory Statement of the Rule

Rule Subject:

Matter No.

per RCW 34.05.325(6)

#### I. History:

A CR 101 was filed on: August 12, 2015

The comment period was open until: October 2, 2015

A CR 102 was filed on: October 16, 2015

The comment period was open until: November 24, 2015

A rule-making hearing was held on: November 24, 2015

#### II. Commissioner's Reasons for Adopting the Rule: (identify the agency's reasons for adopting the rule)

Washington's current IRO system is not conducive to collecting, analyzing, and making IRO information publicly available. The current system does not allow for accessible and usable IRO decision information, consistency in the IRO review process, or effective oversight, enforcement, and regulation of the IRO process. This proposed rule adds language requiring carriers to use the Commissioner's on-line database in assigning IROs and adds a new paragraph to both WAC 284-43-550 and WAC 284-43-630, requiring each carrier and health plan to submit final IRO decision determination information to the Office of the Insurance Commissioner's on-line database within 3 days of receipt of the IRO's final decision. Decision information shall be submitted to the database in accordance with data requirements set forth by the OIC and listed on the OIC's website.

#### III. Text Differences between CR 102 published text and CR103 text to be adopted: No changes were made to CR 102 published text.

- Editing changes only
- Differences and reasons for them:

#### IV. Summary of Received Comments on the Proposed Rule

##### A. Summary of all comments received [de-identified, arranged by category or subject matter]

##### 1. During the CR 101 comment period

On behalf of its provider members, an association expressed its general support for the Commissioner's rulemaking to collect data on coverage decisions made by independent review organizations. The letter expressed hope that this effort would lead to greater consistency and fairness in coverage decisions.

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#### 2. During the CR 101 comment period

An issuer expressed concern that the data elements taken together may enable re-identification. In particular, it suggested that enrollees over 89 be aggregated into a category of 90 or older.

Commissioner's response:

The Commissioner notes that format for data elements are not set in rule; however, the Commissioner's database project team addressed this concern by ensuring that age data is exhibited in age ranges for the consumer facing side of the search function for the database. To ensure privacy protections of the IRO online database, the Commissioner has implemented precautions by de-identifying information and limiting required data elements.

#### 3. During the CR 101 comment period

Two issuers requested information regarding instructions for the database. In addition, one of the issuers expressed its support of the database fields and scope and requested the citation of current law supporting the creation of the database.

Commissioner's response:

The Commissioner notes that instructions for the database are not set in rule; however, the Commissioner's database project team addressed this concern by having the Commissioner's business owner division create user instructions that will be available on the Commissioner's on-line website.

The Commissioner notes that current law supporting creation of the database and rule resides in RCW 48.43.530 and RCW 48.43.535.

#### 4. During the CR 102 comment period

A state agency expressed its support for the rule.

#### 5. During the CR 102 comment period

On behalf of its provider members, an association expressed its support for the Commissioner's rulemaking to require health plans to submit IRO determinations to the OIC so that information can be entered into the Commissioner's online database. The letter stated improved transparency will help to inform patient decisions and hopefully lead to improved health outcomes.

#### 6. During the CR 102 comment period

On behalf of 200+ provider members, an association attorney expressed strong support for

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the rule and noted that the proposed rules are a big step forward for the health care delivery system in general, and for consumers and providers specifically. The writer expressed appreciation for the Commissioner's leadership in proposing these rules.

#### 7. During the CR 102 comment period

A letter addressed from four consumer advocate groups expressed concern that the searchable database will contain the final IRO decision, such as denial overturned due to medical necessity, but not the full redacted IRO decision that contains the independent reviewer's reasoning, the list of types of medical records submitted with a successful appeal, and citations to studies and professional guidelines relied upon by the review.

The group expressed its disagreement with the OIC's position that requiring the actual decisions to be made available in addition to the data elements submitted via the online web form is outside the scope and intent of RCW 48.43.530 and 535.

The group expressed concern that disclosure of the IRO decision is currently limited to enrollees appealing a denial and that narrow scope of disclosure hampers the ability of other enrollees to access relevant decisions that could provide consumers with help in crafting their own appeal.

#### Commissioner's response:

The Commissioner notes that the format for data elements is not set in rule; however, the Commissioner's database project team addressed concerns by ensuring that two of its data elements allow for free form, unlimited text. One of these data elements is "Decision Rationale by IRO" and the other is "Specialty, credentials, and qualification of reviewer." In addition, the Commissioner also addressed these concerns by making the two data elements "required" instead of "optional." Finally, the Commissioner notes that the "Decision Rationale by IRO" text box allows for the IRO's summary of its independent reviewer's reasoning, the list of types of medical records submitted, and citations to studies and professional guidelines relied upon by the review.

To ensure privacy protections of the IRO online database, the Commissioner has implemented precautions by de-identifying information and limiting required data elements.

The Commissioner maintains that inclusion of the complete IRO decisions in the database is outside the scope and legislative intent of RCW 48.43.530 and 48.43.535, which limit their reporting references to phrases such as trends, patterns, and "a log of all such determinations".

Consequently, meeting these concerns is not within the scope of the project; attempting to meet them would delay the project's expected "go live" date of January 2016.

In keeping with the intent of RCW 48.43.530 and 535 the Commissioner established that the IRO database will be administered under the Company Supervision division, in Market Conduct Oversight. Market Conduct Oversight will review the data within the IRO database to keep track of IRO decisions and monitor carrier's adherence to their required activities.

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Under RCW Chapter 48.37, Market Conduct has the ability to require carriers to send in information at any time. As part of its regulatory oversight, it can take action and the carrier in question will be asked for detailed information. The Commissioner views the database as an important tool to help Market Conduct Oversight better identify where potential problems are, such as with decisions being overturned by the IROs or with the coverage determination processes the carriers are following which create the need for IROs. However, because Market Conduct Oversight can view the original IRO records, requiring the submission of redacted records to the database does not improve the usefulness of this tool in meeting the intent of RCW 48.43.530 and 535. (It should be noted that any market conduct review or examination falls under the confidentiality protections of RCW 48.37.080.)

The Commissioner acknowledges the concern that disclosure of the IRO decision is currently limited to enrollees appealing a denial and that this narrow scope of disclosure hampers the ability of other enrollees to access relevant decisions that could provide consumers with help in crafting their own appeal. However, the Commissioner does not agree that RCW 48.43.530 and 535, as currently worded, were legislatively intended to allow for the incorporation of complete IRO decisions in the reporting required by this legislation. These sections of the law clearly state that IRO decisions are to be available to the enrollee, the enrollee's representative, and the enrollee's provider.

**Date completed: November 25, 2015**

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