

Prescription emergency fill notifications (R 2016-08)

Concise Explanatory Statement
September 20, 2016

Mike Kreidler, *Insurance Commissioner*
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Introduction

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

The CES:

1. Identifies the Commissioner’s reasons for adopting the rule;
2. Describes the differences between the proposed rule and the final rule (other than editing changes) and the reasons for the difference;
3. Summarizes and responds to all comments that the OIC 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 reasons for not incorporating the change requested by the comment;
4. Must be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Reasons for adopting the rule

R 2014-13 created an emergency fill, a short-term prescription fill that allows for the processing of a prior authorization request. However, the rules did not prescribe how consumers are supposed to be notified of the emergency fill option. Additional rulemaking is necessary to clarify how consumers are to be notified of the emergency fill option, including any cost-sharing obligations.

Background

RCW 48.165.0301 required a work group to make recommendations to the OIC to streamline the prior authorization of prescription drugs. The statute required the OIC to adopt the recommendations of the work group into rule, without expanding or limiting the recommendations of the work group. The work group recommendations were promulgated in R 2014-13 and R 2016-02. This rulemaking clarifies the consumer's role regarding the emergency fill.

Rule development process

On April 29, 2016, the OIC filed a Pre-proposal Statement of Inquiry (CR-101) proposing to write a rule to implement the requirements of SSB 5023. The comment period on the CR-101 was open until June 17, 2016.

On May 4, 2016, the OIC shared a draft with interested stakeholders. The comment period on the stakeholder draft was open until June 17, 2016.

On July 29, 2016, the OIC filed a CR-102. The agency held a hearing on September 6, 2016. The OIC filed a CR-103P to adopt the rule on September 20, 2016 and the rule went into effect that day.

Differences between proposed and final rule

No differences.

Responsiveness summary of comments

The OIC received numerous comments and suggestions regarding this rulemaking. The following information contains a description of the comments, the OIC's assessment of the comments, and information about whether the OIC included or rejected the comments.

The OIC received comments from:

- Cambia
- UnitedHealthcare Insurance Company and UnitedHealthcare of Washington, Inc

Comments

Comment: Change "policy" in WAC 284-43-5110(5) to "health benefit plan and agreement" or something similar.

Response: Thank you for your comment. The Commissioner declines to make this change.

Comment: The proposed amendment to WAC 284-170-470 (c) inserts the statement: "An emergency fill is a covered benefit." The authorizing legislation cited for the proposed rulemaking is the Commissioner's general rulemaking authority statute (RCW 48.02.060), and the transparency of health care information statute (RCW 48.43.510). Neither statute authorizes the Commissioner to establish a mandatory benefit for every emergency fill prescription that a member presents. It was requested that the new mandate be stricken from the proposed draft text; the language in the current rule section meets the requirements of RCW 48.43.510 for transparency and does not need to be amended. Prior authorization rulemaking and creating a new mandate is outside the scope of the proposed rulemaking as set forth in the CR101.

Response: This is not a new mandate. This is about provider reimbursement adopted under RCW 48.165.0301. Transparency that providers are being reimbursed for a service needs to be disclosed to the enrollee because the reimbursement is only for the emergency fill, and the enrollee will still be required by the terms of their contract to follow any prior authorization requirements. In addition, the consumer needs to be aware of any cost-sharing obligations.

Comment: Instead of requiring carriers to include the process to obtain an emergency fill in the policy, the OIC should instead require carriers to include information on where consumers may access the process for consumers to obtain an emergency fill, and cost-sharing requirements, if any, for an emergency fill.

Response: The purpose of this rule is transparency. The purpose of the rule would not be fulfilled with your request. The Commissioner declines to make the change. Certain elements of the emergency fill process are allowed to be online only, but other elements must be disclosed to enrollees in the policy.

Comment: It was asked if the rule applies to Medicare supplemental plans.

Response: No. This chapter's rule (Chapter 284-43 WAC) excludes Medicare supplement plans from its scope.

Implementation plan

Implementation and enforcement of the rule

The OIC intends to implement and enforce the rule through the Rates and Forms Division and Market Conduct Oversight Unit, which is part of the Company Supervision Division. Using existing resources, OIC staff will continue to work with carriers, providers, and interested parties in complying with the requirements of these rules.

How the agency will inform and educate affected persons about the rule

After the agency files the permanent rule and adopts it with the Office of the Code Reviser:

- Policy staff will distribute copies of the final rule and the Concise Explanatory Statement (CES) to its standard rule making listserv, which includes interested parties and commenters.
- The Rules Coordinator will post the CR-103 documents on the Office of Insurance Commissioner's website
- OIC staff will address questions as follows:

Type of Inquiry	Division
Consumer assistance	Consumer Protection Division
Rule content	Rates and Forms
Authority for rules	Policy and Legislative Affairs
Enforcement of rule	Legal Division
Market Compliance	Company Supervision

How the agency intends to promote and assist voluntary compliance for this rule

The steps listed under implementation will inform and educate affected persons on the changes and help promote voluntary compliance.

How the agency intends to evaluate whether the rule achieves the purpose for which it was adopted

The OIC will work closely with carriers, providers, and other interested parties to evaluate the effectiveness of the rule as well as monitor consumer complaints and to monitor plans for non-compliance.

Appendix A – Hearing Summary

Summarizing Memorandum

To: Mike Kreidler, Insurance Commissioner
From: Jim Freeburg, presiding official for rule hearing
Matter: Rule 2016-08
Topic: Summary of hearing on emergency fill fix rule

This memorandum summarizes the hearing on the above-named rulemaking, which was held on September 6, 2016 at 1:30 p.m. in Tumwater. I presided over this hearing in your place.

The hearing began at 1:33 p.m.

No one attended the hearing.

The hearing was adjourned.

SIGNED this 6th day of September, 2016

Jim Freeburg, Presiding Official