



Mike Kreidler- Insurance commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R 2022-03**

**CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS
SUMMARY; RULE DEVELOPMENT PROCESS; AND
IMPLEMENTATION PLAN**

Relating to the adoption of

Accessing and Receiving Health Care Services and Benefits

October 27, 2022

TABLE OF CONTENTS

Section 1	Introduction	pg. 3
Section 2	Reasons for adopting the rule	pg. 3
Section 3	Rule development process	pg. 3
Section 4	Differences between proposed and final rule	pg. 3
Section 5	Responsiveness summary	pg. 4
Section 6	Implementation plan	pg. 5
Appendix A	Hearing Summary (CR-102)	pg. 6

Section 1: Introduction

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 shall:

1. Identify the Commissioner's reasons for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences;
3. Summarize and respond to all comments 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 Commissioner's reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

The Commissioner is adopting rules amend existing rules as needed to be consistent with ESHB 1821 (Chapter 213, Laws of 2022) regarding accessing and receiving audio-only telehealth.

Section 3: Rule Development Process

On June 9, 2022, the OIC filed a preproposal statement of inquiry (CR-101) to begin formal rulemaking. On June 10, 2022, the OIC released a solicitation for comments regarding the necessity for rulemaking on HB 1651 (Chapter 122, Laws of 2022) and E2SSB 5702 (Chapter 236, Laws of 2022), which were originally considered for inclusion in this rulemaking. The comment period for the CR-101 and this solicitation was open until July 8, 2022.

The OIC released the draft of the revised rule text on July 29, 2022, and held a meeting for interested parties on August 11, 2022.

On September 16, 2022, the OIC filed a CR-102, and the public hearing was scheduled for October 25, 2022.

The OIC held the public hearing on October 25, 2022. Comments on the CR-102 were due on October 26, 2022.

Section 4: Differences Between Proposed and Final Rule

There are no differences between the proposed version that was submitted with the CR-102 and the adopted version.

Section 5: Responsiveness Summary

The OIC received comments and suggestions regarding this rule. The following information contains a summary of the comments, the OIC’s response to the comments, and information about whether the OIC incorporated changes based on the comments.

The OIC received comments from:

- Association of Washington Healthcare Plans
- Pam Brannan
- Washington State Medical Association
- ZoomCare

Comments to the CR-101, draft rule text, and CR-102

Comment	Response
Would like to see additional billing guidelines for insurance carriers to follow in relation to HB 1651, as this may become where physicians are fighting or having to rebill claims if it is not specific. Insurance carriers will have to write specific edits for the claims to go through, which can be a large task, and this may be a simpler solution for everyone.	The Commissioner appreciates the comment but declines the request. Addressing billing methods is outside the scope of this rulemaking.
Don’t see an immediate need for rules to implement HB 1651 and E2SSB 5702, as plans don’t require further clarification or guidance to implement or comply with the requirements in those bills.	The Commissioner appreciates the feedback and will not pursue rulemaking related to HB 1651 and E2SSB 5702 at this time.
Seeking clarification on WAC 284-170-130(13)(b)(ii)(c) on page 11 of the draft, as it is not reflected in RCW: <i>(C) A referral includes circumstances in which the provider who has had at least one in person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the covered person participates in the audio-only telemedicine encounter with the provider to whom the covered person has been referred.</i> This provision is unclear. Request that the OIC provide information on the intent and purpose of Subsection C on page 11.	An equivalent provision is already included in the existing rules. The statute was changed to differentiate requirements based on type of service, and the rules are being amended to reflect that differentiation. Thus, the existing provision is being amended as appropriate for “health care services included in the essential health benefits category of mental health and substance use disorder services (including behavioral health treatment),” as now listed in WAC 284-170-130(13)(a)(ii)(C). And the existing provision is also being amended as appropriate for “any other health care service,” as now listed in WAC 284-170-130(13)(b)(ii)(C).
Support the proposed rule as presented.	The Commissioner appreciates the feedback.

Section 6: Implementation Plan

A. Implementation and enforcement of the rule.

The OIC intends to implement the rule through the Rates, Forms and Provider Networks Division and enforce the rule through the Legal Affairs Division. OIC staff will continue to work with the carriers and interested parties with the requirements of the rule.

B. How the Agency intends to 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 and Legislation Division staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC's standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the OIC's website.
- OIC staff will address questions as follows:

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

C. How the Agency intends to promote and assist voluntary compliance for this rule.

- Policy and Legislation Division staff will distribute the final rule and the Concise Explanatory Statement (CES) to all interested parties by posting and sharing the documents through the OIC's standard rule making listserv.
- The Rules Coordinator will post the CR-103 documents on the OIC's website.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

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

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum

**To: Mike Kreidler
Insurance Commissioner**

**From: Shari Maier
Presiding Official, Hearing on Rule-making**

Matter No. R 2022-03

Topic of Rule-making: Accessing and Receiving Health Care Services and Benefits

This memorandum summarizes the hearing on the above-named rule making, held on October 25, 2022, in Olympia, Washington via a virtual meeting over which I presided in your stead. The hearing began at 10:34 a.m.

The following agency personnel were present: Jennifer Kreidler, Lynda Dieckman, Mary Tedders-Young, Molly Nollette, Paul DuBois, Sandra Mendez, and Jesse Wolff.

In attendance:

Amy Do
Dauna Shoulders
Dawn Marie Cummings
Denyse Bayer
Frankie Kaiser
Gail McGaffick
Jane Douthit
Melanie Anderson
Merlene Converse
Scott Sigmon
Shari Maier
Thalia Cronin
Zachary Correia

Contents of the presentations made at hearing:

No testimony was presented at this hearing.

The hearing was adjourned.

SIGNED this 26th day of October 2022

*s/
Shari Maier, Presiding Official*