



OFFICE OF
INSURANCE COMMISSIONER

May 20, 2010

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Dear Professor Downing:

Thank you for your recent letter to Insurance Commissioner Kreidler, inquiring whether health insurance carriers are required to include pharmacists in provider networks under Washington State's "every category of provider" law. Commissioner Kreidler asked that I respond to your letter on his behalf. Thank you very much for your patience as we analyze this excellent, and complex, question.

We believe the short answer is that, in certain limited situations, carriers are required to do so. These services are subject to utilization review and "scope of practice" limitations.

As you pointed out, every health plan delivered, issued for delivery, or renewed by a health carrier in Washington State must permit every category of health care provider to provide health services or care for conditions included in the basic health plan services, to the extent that the provision of such health services or care is within the health care providers' permitted scope of practice. RCW 48.43.045. You have suggested that this means that health carriers are required to include pharmacists as providers where the pharmacists are providing covered services within their scope of practice.¹

The regulation effectuating this statute, WAC 284-43-205, fleshes out this requirement.

"...health carriers shall not exclude any category of providers licensed by the state of Washington who provide health care services or care within the scope of their practice for conditions covered by basic health plan (BHP) services..."

If the Basic Health Plan covers the condition, the carrier may not exclude a category of provider who is licensed to provide services for that condition, and is acting within the scope of practice, unless such services would not meet the carrier's standards pursuant to RCW 48.43.045(1)(b). For example, if the BHP provides coverage for outpatient treatment of lower back pain, any category of provider that provides cost-effective and clinically efficacious outpatient treatment for lower back pain within its

¹ Although your letter asks us to "review the intent of the law," the intent of the law is not relevant to an analysis of its requirements unless the law is ambiguous. We do not believe this law is ambiguous.



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scope practice and otherwise abides by standards pursuant to RCW 48.43.045 (1)(b) may not be excluded from the network. WAC 284-43-205(1).

Section 2 of that regulation specifies that, although health carriers may require providers to abide by certain standards, these standards may not be used in a manner designed to exclude categories of providers unreasonably. Section 3 allows health plans to place reasonable limits on individual services rendered by specific categories of providers, but prohibits unreasonable limits and limits on the type of provider permitted to render a covered service unless such limits comply with RCW 48.43.045(1)(b).

The Insurance Code defines "health care provider" or "provider" as, "(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or (b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment. RCW 48.43.005(16). Pharmacists are licensed under Title 18 (more specifically, Chapter 18.64) to practice health services. They may also have employees or agents performing health services within the scope of their employment.

"Health care service" is defined as "that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease." RCW 48.43.005(17).

"Pharmacist" means a person duly licensed by the Washington state board of pharmacy to engage in the practice of pharmacy. RCW 18.64.011(20).

"Practice of pharmacy" includes the practice of and responsibility for: Interpreting prescription orders; the compounding, dispensing, labeling, administering, and distributing of drugs and devices; the monitoring of drug therapy and use; the initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved for his or her practice by a practitioner authorized to prescribe drugs; the participating in drug utilization reviews and drug product selection; the proper and safe storing and distributing of drugs and devices and maintenance of proper records thereof; the providing of information on legend drugs which may include, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices. RCW 18.64.011(23).

Based upon these laws, there are certain situations where pharmacists might be a category of provider that must be included in a provider network for medical services provided under a health care service contract. The situations would be limited to the pharmacists' scope of practice.²

² We do not express any opinion on whether every action listed in your letter is within a pharmacist's scope of practice. That issue is outside the scope of this opinion, and outside the expertise of this agency. The answer to this question should come from someone with specialized knowledge of the practice of pharmacy.

The list of medical services in your letter that are potentially performed by pharmacists seems extremely broad. However, WAC 284-43-815(2)(g) does contemplate "intellectual service," including "disease management services" for migraines, diabetes, etc. We must defer to your expertise as a clinical professor of pharmacy, but we would expect that carriers may also have questions about what is and is not within a pharmacist's scope of practice. Simply to start with the first item on the list, is a pharmacist, by virtue of a license to practice pharmacy, licensed to perform chemical dependency counseling? Could a carrier be required to compensate the pharmacist if billed for this service? Carriers may, and should, inquire into the scope of practice issue. If a service is not within a pharmacist's scope of practice, then pharmacists cannot be included in "every category of provider" of that service.

A second limiting factor is the potential for duplication of billing for services. The utilization review function would be expected to limit the benefits available for pharmacists' performance of these functions as independent services.³ Using "medication management" as an example, there are two ways in which we see potential for duplication of billing for services. First, a patient's medications must be prescribed by someone with prescriptive authority, such as a physician, physician's assistant, or nurse practitioner. To the extent that a pharmacist may have legal prescriptive authority, the pharmacist prescribing a medication would have the duty to monitor this medication and there would be no potential for this type of duplication. However, where a medication has been prescribed by someone other than the pharmacist, the "management" of this medication would be the duty of the prescriber. The pharmacist may well analyze the dosage and the patient's response to the medication as part of the dispensing function. Alternatively, a physician may ask a pharmacist to review the situation and render an opinion. However, would it be appropriate for both the physician and the pharmacist to bill for the same "medication management"?

Second and closely-linked, is the type of "medication management" that is an integral part of the dispensing function. Before dispensing a medication, I understand that the pharmacist has a duty to know relevant information about the patient's history – including every other medication the patient is taking – and to analyze the patient's medications for potential interactions or contraindications. He or she must also assess whether there is any concern with filling the prescription that must be addressed before the medication can be safely dispensed. (For example, is the dosage within the recommended range, is the patient having a side effect or other poor reaction to the medication?) This aspect of "medication management" is, we believe, compensated as part of the compensation for dispensing. We question whether it should be a separately-billable service. But we see the potential that this analysis could be billed as "medication management."

Even where services are within the scope of practice of pharmacists, before plans are required to permit a category of provider to offer specific services, those providers *must*:

³ Carriers are required to perform utilization review functions. RCW 48.43.520. This would include analyzing for dual billing for services that are actually only one service (sometimes called "unbundling") as well as two providers billing for the same service.

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. . . agree to abide by standards related to:

- (A) Provision, utilization review, and cost containment of health services;
- (B) Management and administrative procedures; and
- (C) Provision of cost-effective and clinically efficacious health services.

RCW 48.43.045(1)(a)(ii).

The governing regulation goes on to state:

However, health carriers may determine that particular services for particular conditions by particular categories of providers are not cost-effective or clinically efficacious, and may exclude such services from coverage or reimbursement under a health plan. Any such determinations must be supported by relevant information or evidence of the type usually considered and relied upon in making determinations of cost-effectiveness or clinical efficacy.

WAC 284-43-205(2).

In conclusion, to the extent that covered services are within the scope of practice of pharmacists, and providers are willing to agree to abide by standards set by the carriers under RCW 48.43.045(1)(a)(ii), we believe carriers are required by the Washington statutory structure cited above to include pharmacists in their provider networks. But we caution you to be aware of the very narrow scope of this opinion. We cannot say that pharmacists must be included in provider networks to perform any of the services in the list in your letter. We can only say that for a particular service if each of the variables was satisfied.

I hope this is helpful.

Very truly yours,



Carol Sureau
Deputy Commissioner, Legal Affairs

cc: Jeff Rochon, CEO, Washington State Pharmacy Association