

June 15, 2020

Honorable Mike Kreidler  
Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504

Re: WSHA Comments on Balance Billing Protection Act Proposed Rule WSR 20-12-083

Dear Commissioner Kreidler,

On behalf of our 108 hospital and health system members, the Washington State Hospital Association (WSHA) values the opportunity to comment on additional rulemaking implementing HB1065, the Balance Billing Protection Act (BBPA). We appreciate the Commissioner's efforts to implement legislation that provides protection for patients in a way that is workable for all stakeholders including carriers, hospitals and providers and minimizes unintended impacts to the insurance market. We appreciate the rulemaking that has already been done and the efforts of OIC staff to provide information regarding the BBPA requirements and dispute resolution process to both carriers and providers. We agree that further rulemaking will help clarify responsibilities of the parties and better refine the processes.

Since our input is based on the CR-101 preproposal statement of inquiry, our comments are general. We plan to provide more detailed comments as the rulemaking process progresses. These comments are focused on topics we believe will be part of the upcoming rulemaking.

**Extension of informal negotiation period.** We understand the rulemaking may address whether the good faith informal negotiation period in WAC 284-43B-030 (3) can be extended beyond 30 calendar days. We believe it should be able to be extended an additional 30 days upon mutual written agreement of the parties. We believe this would help carriers and providers avoid arbitration and by increasing negotiated payment arrangements, reduce the volume of out of network services.

**Use of standardized form for arbitration.** WSHA supports use of a standardized form to ensure all necessary particulars of the dispute are communicated to arbitrators in a standard way. We believe this will enhance the efficiency of the process for both carriers and providers. We request that the form retain the ability for the provider or carrier to include any additional information they believe relevant to the determination.

**Criteria for bundling for arbitration.** WSHA believes it is in the public's best interest if the provisions allowing bundling of similar claims for arbitration are construed liberally. Payment disputes are rarely regarding a single claim. They are generally a result of disagreement regarding the rate the carrier is paying for all services of the provider for all patients insured by the carrier.

Few claims will by themselves justify the cost of arbitration for a provider. The ability of a provider to aggregate smaller claims from a high-volume carrier is necessary for arbitration to be financially available for providers. We also think aggregation of claims will encourage permanent agreements between carriers and providers. We recognize that to facilitate this, there are a few terms that require clarification.

- (i) **Involve identical carrier and provider or facility parties.** Most providers contract with carriers as a group rather than as individual providers. We believe “facility party” should be the provider’s group if that is the entity level that they would normally contract with carriers. Likewise, carriers usually contract with emergency department (ED) physicians, anesthesiologists, radiologists, and other hospital-based providers at the group level rather than at the individual provider level. When an individual provider is out-of-network, it is because the entire group is out-of-network with that carrier. We recommend that providers be able to aggregate claims at the group level so long as the carrier is identical and meets criteria regarding range of services.
- (ii) **Involve claims with the same or related current procedural terminology codes relevant to a particular procedure.** WSHA recommends that this provision be construed liberally to ensure provider access to the arbitration process and maximize the potential of negotiated agreements. We recommend “same or related” be applied to services within the specialty of the provider or the provider’s group if it is a single specialty or group of related specialties. For example, an anesthesiologist or anesthesiology group should be able to aggregate all anesthesia services with the single payor within the two-month period. Carriers do not negotiate payment for individual services, they apply a payment rate (conversion factor) to all services of the provider. To address the issue of commercial reasonability, providers must be able to dispute payment in a financially feasible manner.

Thank you for the opportunity to comment. If you have questions, please contact Andrew Busz, WSHA Policy Director, Finance at (206) 216-2533 or [andrewb@wsha.org](mailto:andrewb@wsha.org).



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