



September 9, 2019

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

Re: WSHA Comments on Balance Billing Protection Act Second Stakeholder Draft Rule

Commissioner Kreidler:

On behalf of our 103 hospital and health system members, the Washington State Hospital Association (WSHA) values the opportunity to comment on the second stakeholder draft rule implementing HB1065, the Balance Billing Protection Act (BBPA). We appreciate the Commissioner's efforts to obtain and implement legislation that provides protection for patients from balance billing outside their control and to do so in a way that is workable for all stakeholders including carriers, hospitals, and providers and minimizes unintended impacts to the insurance market.

In general, we support the majority of the changes in the second stakeholder draft and believe they provide helpful clarity. We do have a few items that we have concerns about reflected in our attached comments, including:

- The definition of median rate to provide more clear instructions for the calculation;
- The definition of in-network provider should be clarified for single case agreements;
- Self-funded group health plan opt-in and appropriate removal by the OIC; and
- Notice of consumer rights and transparency, including more time to comply with posting of updates to the website.

If you have questions, please contact Andrew Busz, WSHA Policy Director, Finance at (206) 216-2533 or andrewb@wsa.org.

A handwritten signature in black ink that reads 'Chelene Whiteaker'.

Chelene Whiteaker
Senior Vice President, Government Affairs
Washington State Hospital Association
Association

A handwritten signature in black ink that reads 'Andrew Busz'.

Andrew Busz
Policy Director, Finance
Washington State Hospital
Association

WSHA Specific Comments on Second Stakeholder Draft

WAC 284-43B-010 Definitions “Median rate of same or similar geographic area”

As we stated in our previous comment letter, we believe the OIC should ensure there are several separate geographic regions to ensure the rates reflect specific community variations. We believe the OIC should provide more specificity on the definition of same or similar geographic area. We encourage the OIC to, as much as possible, adopt a proposal that provides robust geographical differentiation, while also allowing enough claims to make comparisons reasonable.

We recommend a change to the definition of median that is in the second stakeholder draft to ensure it is interpreted in a manner consistent with normal industry and statistical practice and reflects the relative volume of the negotiated amounts. We recommend this section be changed to read: “For purposes of this subsection, median means the middle number of a sorted list of negotiated reimbursement amounts, **with each paid claim’s negotiated reimbursement amount separately represented in the list**, arranged in order from least to greatest, with in-network providers with respect to a certain emergency or surgical or ancillary service.” For example, if there are 10 claims with a negotiated rate of \$500, 4 at \$400, and 4 at \$300, the median for these 18 claims should be \$500 rather than \$400 since the middle claim paid \$500.

WAC 284-43B-010 Definitions “In-network” or “participating”

In our comments on first stakeholder draft, we supported inclusion of the sentence “A single case agreement between a provider or facility and a carrier executed under WAC 284-170-200 does not constitute a contract under this subsection.” In the second stakeholder draft, the sentence was changed to “A single case agreement between a provider or facility and a carrier constitutes a contract exclusively for purposes of this definition under the balance billing protection act.” We have concerns on the redrafting.

As stated previously, we do not think that independent providers will necessarily be aware of single case agreements between a facility and the carrier, especially if the agreement occurs after services have been billed. The single case agreements should not affect the provider’s billing practices, since the provider may not be informed about them.

We support the patient receiving all BBPA protections for services that are covered by the agreement but are concerned the current language could be interpreted more broadly and applied to services that are not part of the agreement and apart from the agreement would not be subject to the act. We recommend the sentence be changed to read: “A single case

agreement between a provider or facility and a carrier constitutes a contract exclusively for purposes of this definition under the balance billing protection act **and is limited to the services and parties in the agreement.**”

WAC 284-432B-080 Self-funded group health plan opt-in

We support provisions of the bill which allow and encourage self-funded groups to opt into the BBPA’s provisions on balance billing protections and payment and dispute solutions. We appreciate the additional clarity regarding the structure of the opt-in process. As we stated in our previous comments, we believe the OIC has the authority and responsibility to determine if a group is meeting the requirements of the opt-in agreement and attestation. We recommend the attestation form state that the OIC has authority to determine if the group or group’s third-party administrator is meeting the requirements and also state that the OIC has the authority to take appropriate action if it is not. Appropriate action could include removal of the group from the list of opt-in groups confirmed by the OIC.

WAC 284-43B-060 Notice of consumer rights and transparency

Facility and provider communications. We appreciate the inclusion of the requirement that says the information regarding applicability of the BBPA to an enrollee’s coverage must be available through a standard 271 transaction.

Posting of contracted insurers. We appreciate the increase in the time period for facilities and providers to post updates of changes to contracted carrier networks from 7 to 14 calendar days. Members have asked that it be extended to 14 business days to be consistent with standard notice provisions and the other notice provisions of the act.