



November 16, 2021

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

Re: WSHA Comments on Stakeholder Draft Changes to Balance Billing Protection Act

Commissioner Kreidler:

On behalf of more than 100 hospital and health system members, the Washington State Hospital Association (WSHA) values the opportunity to provide comments on stakeholder draft legislation to reconcile the Balance Billing Protection Act (BBPA) with the federal No Surprises Act (NSA) and expand consumer protections.

We appreciate the care and effort put into the draft legislation and the proactive work by department staff to obtain stakeholder input.

We believe that the BBPA generally provides greater safeguards for providers and greater accountability for insurers than does the NSA. WSHA has been advocating at the federal level for NSA standards for determining the qualifying payment amount and arbitration process that are more in line with the BBPA and we still hope some improvements to the NSA standards and process will occur. One particular concern is that the NSA does not have a meaningful network adequacy standard and allows insurers to pay based on their own median payment rate, in contrast to the BBPA requirement of a commercially reasonable payment ultimately confirmable by data drawn from the broader market. In our view, the NSA standard rewards insurers that lack network adequacy and either do not contract with providers at all or pay rates significantly lower than insurers that have committed to robust contracted networks.

That said, we recognize it would be difficult for the state to maintain payment requirements and arbitration mechanisms for state regulated insurers that are separate and different than what can be applied to insurers that are not subject to state regulation. We also recognize the difficulty for insurers, providers, and consumers to accurately navigate two separate sets of standards and mechanisms. However, we are concerned about the potential of providers being subject to balance billing prohibitions before they have recourse to an operational and meaningful dispute resolution process. We recommend the state maintain the BBPA payment and arbitration provisions until such time that the department determines that the NSA arbitration mechanisms are operational.

We believe the NSA standards and arbitration process will ultimately result in erosion of contracted networks and increased out of network services unless the network adequacy requirements are vigorously enforced. We appreciate the department's commitment to network adequacy and the language in the stakeholder draft legislation affirming that the arbitration process is not a substitute for meeting the state's network adequacy requirements.

Here are our additional comments, in the general order that the provisions occur in the draft bill:

Report on payment impact and utilization from state all-payer claims database (Section 1). We support the need to track and report changes to payment and out-of-network utilization that will occur over time due to NSA and BBPA implementation. We recommend that the data source be expanded to include data from self-insured groups and that the report include network adequacy monitoring and enforcement information from the Office of the Insurance Commissioner.

Scope of emergency services (Section 2). We support the expansion of the definition of emergency services to include post-stabilization services associated with an emergency visit or admission to conform with the NSA definitions. We believe a consistent standard for both state-regulated and federally regulated insurers will help minimize confusion and variation in insurer coverage and care delivery.

Coverage for emergency services (Section 3). We appreciate the language changes to the coverage requirements for this section to clarify that treatment provided as part of an emergency visit should be treated appropriately as part of the emergency service and not be subject to bifurcation and differential approval and payment by insurers.

Expansion of BBPA to include Crisis Behavioral Health Services. (Section 8) We support the expansion of the BBPA to include balance billing protections for enrollees that receive crisis and emergency behavior health services at the designated behavioral health emergency facilities. We appreciate the language to ensure carriers cover these services without unreasonable barriers and pay reasonable amounts. We also appreciate the provision that would require the state to provide a dispute resolution mechanism if it is not available to the behavioral health providers under the NSA rules and mechanisms. For balance billing protections to work properly, there must be sufficient mechanisms to ensure carriers make reasonable payment for out of network services, rather than have additional costs absorbed by the behavior health entity, most of whom already face significant funding challenges. We will defer to the behavioral health agencies themselves regarding any specific changes to the draft language.

Provision of Standard Notice of Consumer Rights. (Section 12) We appreciate the Commissioner updating the standard notice of consumer rights to comply with both BBPA and

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NSA requirements. The NSA has significant new requirements, so OIC's efforts to streamline processes and requirements where possible are much appreciated.

Proposal for balance billing protections for ground ambulance services (Section 19) We support the preparation of recommendations regarding ground ambulance services and look forward to engaging on this issue. As is the case with other balance billing protections, to be sustainable for providers there must be robust provisions to ensure insurers cover and provide reasonable and sustainable payments for out of network ground ambulance services. If this does not occur, the financial viability of these critical services could be jeopardized.

Thank you again 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.



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