

July 23, 2021

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

Re: WSHA Comments on Reconciliation of Balance Billing Protection Act and No Surprises Act

Commissioner Kreidler:

On behalf of more than 100 hospital and health system members, the Washington State Hospital Association (WSHA) values the opportunity to comment regarding potential changes to reconcile the Balance Billing Protection Act (BBPA) with the federal No Surprises Act (NSA).

Because many specific details of the interpretation, implementation, monitoring, and enforcement of the NSA are still outstanding, our comments today are general in nature. WSHA's position will evolve as more specifics of the federal mechanisms and enforcement are known.

We believe there are areas where the BBPA generally provides greater safeguards and greater accountability for insurers than does the NSA and we would recommend the BBPA provisions be retained to the degree possible. Here is our input on the specific provisions in the BBPA we have been told OIC is considering:

**Scope of emergency services.** For non-contracted facilities, BBPA applies to emergency services and admissions through stabilization, while the NSA includes the post-stabilization services provided as part of an inpatient stay. OIC is considering whether it is appropriate to expand the BBPA to match the NSA definition. We believe it makes sense to have services that are provided as part of the same inpatient stay treated consistently, both within the BBPA and between the BBPA and NSA. We would support a change to the BBPA to mirror the NSA policy for post-stabilization services.

**Continuation of ERISA opt-in for BBPA.** We have some concerns that enabling self-funded groups to opt in to the BBPA may allow them to access separate sets of rules and arbitration provisions, creating confusion. That said, we believe the BBPA has superior provisions to ensure fair payment such as the "commercially reasonable" standard, direct pay provisions, and arbitration provisions. We would support continuation of the BBPA opt in provision, so long as groups doing so would be limited to the BBPA payment and dispute resolution provisions.

**Ability for non-contracted physician groups to have patients sign waiver and accept balance billing.** We understand OIC is considering whether to retain and expand the BBPA's prohibition of a consent waiver that would allow a non-contracted provider at a participating facility to balance bill the patient. We do not have a specific position since hospitals would not be directly impacted. We understand the waiver opportunity under the NSA does not apply to hospitals and ancillary hospital-based providers such as ED docs, anesthesiologists, and radiologists. In most cases, this would likely not apply to surgical groups employed or operated by a hospital as they would generally be contracted with the same insurers as the hospital. If the state does allow independent surgical groups to obtain waivers, the hospital should not be required to be involved in that process.

**Calculation of consumer cost-sharing.** Generally, we believe the cost-sharing impact for the consumer is similar between the BBPA and NSA, as both laws require insurers to limit consumer cost-sharing to what the consumer would experience for in-network services. We believe the payment and dispute resolution provisions of the BBPA will do a superior job of ensuring network adequacy and encouraging contractual agreements between providers and insurers, which will benefit consumers.

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@wsa.org](mailto:andrewb@wsa.org).



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



Andrew Busz  
Policy Director, Finance  
Washington State Hospital  
Association