

August 12, 2022

Jane Beyer, Senior Health Policy Advisor
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504

Re: WSHA Comments on HB 1688 Prepublication Draft Rule

Dear Ms. Beyer:

On behalf of more than 100 hospital and health system members, the Washington State Hospital Association (WSHA), values the opportunity to provide comments on the prepublication draft rule for HB 1688.

We appreciate the care and effort put into the prepublication draft rule and believe it accurately reflects the changes made to the BBPA through HB 1688 except for one definition. These rules provide helpful detail and clarity regarding the various processes and responsibilities for all parties.

WSHA concern on definition of hospital department

We do have one significant concern as drafted. The draft rule adds a new definition to WAC 284-43B-010, “outpatient hospital department,” that is inconsistent with how the term is defined by HCA, CMS and DOH. As written, this definition could include any site that is affiliated with a hospital system and greatly expands the obligations of hospitals and systems beyond what currently exists under the BBPA and NSA. We strongly urge the OIC to change this definition in the rule, as it exceeds the scope of current law and does not meet legislative intent.

Under current law and rule, only sites that are licensed as departments of the hospital and meet specific CMS requirements meet the definition of and are treated as hospital-based departments. Sites that meet these requirements are authorized to bill as hospital departments, which may include a facility billing. However, not all sites and clinics that are affiliated with hospitals are set up this way. Many are not licensed as departments of a hospital, and bills are paid as freestanding clinics or sites and should not be subjected to the same requirements as hospitals or ASC facilities.

If outpatient hospital department must be defined for purposes of the BBPA, it should be consistent with how the term is defined elsewhere. [RCW 70.01.040](#) accurately distinguishes between hospital-based and other system-affiliated sites. RCW 70.01.040 also has notification and signage requirements for these specific sites to ensure patients are aware of the hospital-based status. We recognize OIC’s interest in ensuring patients are aware of a site’s potential facility status. We do not believe expanding the definition of hospital through rulemaking to include all a health system’s sites is the appropriate way to do this.

We recommend the following changes to the definition if one must be included:

- (i) “Hospital outpatient department” means an entity or site that

provides outpatient services that is licensed and bills as a hospital department ~~patient may reasonably~~

~~expect is part of a hospital or hospital system, including:~~

(A) An entity that is a provider-based facility under 42 CFR §413.65;

~~(ii) An entity with consumer facing indicia of affiliation with a hospital or hospital system, including but not limited to:~~

(B) An entity with signage indicating the entity is a hospital-based site in accordance with RCW 70.01.040 ~~an affiliation with a hospital or hospital system;~~

(C) An entity that charges inclusion of a hospital facility fee in any billing associated with the receipt of outpatient services from the entity;

~~(C) Scheduling from a central office associated with a hospital or hospital system; or~~

~~(D) Billing under a hospital's federal Center for Medicaid and Medicare Services billing identifier.~~

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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