



OFFICE OF
INSURANCE COMMISSIONER

February 13, 2024

Subject: Balance Billing Protection Act (BBPA) dispute resolution mechanism

Dear interested parties,

The Washington state Balance Billing Protection Act (BBPA) was enacted in 2019 and amended by the Legislature in 2022 in [E2SHB 1688](#). The law prohibits balance billing of consumers by nonparticipating providers (also known as out-of-network providers) of emergency services, and nonemergency services provided in participating hospitals and ambulatory surgical facilities by nonparticipating providers. The BBPA includes a dispute resolution mechanism administered by the Office of the Insurance Commissioner (OIC) to be used when a carrier (or self-funded group health plan that has elected to participate in the BBPA) and a nonparticipating provider do not reach agreement on the payment to be made to the nonparticipating provider.

[RCW 48.49.040](#) provides that “(e)ffective July 1, 2023, or a later date determined by the commissioner, services described in RCW 48.43.020(1) other than air ambulance services are subject to the independent dispute resolution process established in” the federal No Surprises Act. Until that date, the BBPA dispute resolution process, i.e. BBPA arbitration, applies when a nonparticipating provider and a carrier cannot agree on a “commercially reasonable amount” of payment for services subject to balance billing protections.

Under recently adopted BBPA rules, [WAC 284-43B-032\(3\)](#) states that OIC must provide a minimum of four months advance notice of the date on which the dispute resolution process will transition to the federal independent dispute resolution (IDR) process. The notice must be posted on the OIC website. If OIC were to transition to the federal IDR system on July 1, 2024, notice would be posted on or before March 1, 2024.

BBPA arbitration experience

The BBPA arbitration system has been in place since January 1, 2020. OIC has issued three reports to the Legislature related to use of the system.¹

- In 2020, 71 arbitration initiation requests were filed with OIC. Of these, 29 resulted in an arbitrator’s decision, 18 were settled prior to arbitration, 19 were rejected for failure to meet statutory requirements and the remaining five were pending resolution.

¹ Balance Billing Protection Act Arbitration proceedings, Annual Report (June 29, 2023); Balance Billing Protection Act arbitration proceedings, Annual Report (July 1, 2022); Balance Billing Protection Act Arbitration proceedings, Annual Report (June 29, 2021) https://www.insurance.wa.gov/sites/default/files/documents/bbpa-annual-arbitration-report-2021_0.pdf

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- In 2021, 11 arbitration initiation requests were filed with OIC. Nine resulted in an arbitrator's decision and two were rejected for failure to meet the statutory requirements.
- In 2022, 208 arbitration initiation requests were filed with OIC. Of those requests, the vast majority involved the same physician group and the same carrier. The remaining requests involved varied providers and carriers. Of the total arbitration initiation requests, 85 resulted in an arbitrator's decision, 117 were settled prior to arbitration, 5 were rejected for failure to meet statutory requirements and one was pending or had an unknown resolution.
- In 2023, nine arbitration initiation requests were filed with the OIC. Of the nine requests filed four were settled prior to arbitration, three were withdrawn, one resulted in the arbitrator's decision, and one was pending or had an unknown resolution.

Federal No Surprises Act independent dispute resolution system

The federal No Surprises Act (NSA) includes an [independent dispute resolution \(IDR\) process](#) that is used when carriers or self-funded group health plans and nonparticipating providers have not reached agreement on the amount to be paid to the provider. The federal Department of Health and Human Services administers the system. The NSA directs HHS/CMS to issue regular reports related to use of, and outcomes of the IDR process. The most recent reports provide [a partial report regarding disputes filed during the period of October 1 – December 31, 2022](#) and a [status update on arbitration initiation requests filed between April 15, 2022 and March 31, 2023](#).

The federal IDR process was temporarily suspended on August 3, 2023 after an order issued by the U.S. District Court for the Eastern District of Texas in *Texas Medical Association v. United States Department of Health and Human Services*. The federal IDR process was reopened on December 15, 2023 to all dispute types. On December 21, 2023 guidance was issued for extensions for applicable disputes that were impacted by the temporary suspension of the IDR process. Guidance was also issued on the Administrative Fees charged with the IDR process.²

With this request for information, OIC is soliciting comments as to whether Washington state should transition to the federal IDR system on July 1, 2024 or continue to use the BBPA arbitration system to resolve disputes between carriers (or self-funded group health plans that have elected to participate in the BBPA) and nonparticipating providers. If a commenter believes that the BBPA dispute resolution system should be retained, OIC is soliciting comments on when, if ever, the transition to the federal IDR system should occur. We also are soliciting input on the reasons behind commentors' responses to these questions.

Comments are due to OIC by close of business on February 22, 2024. Comments should be submitted to Policy@oic.wa.gov.

² Payment disputes between providers and health plans CMS guidance December 21, 2023; <https://www.cms.gov/nosurprises/help-resolve-payment-disputes/payment-disputes-between-providers-and-health-plans>