

July 30, 2024

Ms. Jane Beyer, Senior Health Policy Advisor
Ms. Sydney Rogalla, Policy Analyst
Office of the Insurance Commissioner

Submitted via email to: janeb@oic.wa.gov; sydney.rogalla@oic.wa.gov;
rulescoordinator@oic.wa.gov

Re: Comments on Stakeholder Review Draft, Implementation of SSB 5986 and updates to BBPA (R-2024-01)

Dear Ms. Beyer, Ms. Rogalla, and Rules Team:

Thank you for the opportunity to provide comments as the Office of the Insurance Commissioner (OIC) pursues rulemaking to implement SSB 5986 related to ground ambulance balance billing and to update other provisions of the Balance Billing Protection Act (BBPA).

Northwest Health Law Advocates is a nonprofit legal organization working to expand affordable, accessible health care for Washington residents. **We strongly support OIC's overall approach in the stakeholder review draft** of the rules, which maintain and reinforce the important consumer protection principles that motivated the Legislature to pass SSB 5986. The draft rules will protect consumers from surprise ground ambulance bills and provide mechanisms to address rate disputes between ground ambulance services organizations, issuers, and municipalities.

We have the following comments at this stage:

1. We strongly support the consumer protections against balance billing in draft WACs 284-43B-025 and 284-43B-027.

We appreciate the provisions in draft WAC 284-43B-025 and WAC 284-43B-027 that ensure strong consumer protections against balance billing by ground ambulance services organizations. These provisions are consistent with SSB 5986 and will ensure consumer protection from ground ambulance balance billing. We are particularly supportive of the language in WAC 284-43B-027(5) that prohibits ground ambulance service organizations from asking patients to waive their rights.

2. We are concerned about the approach to paying ground ambulance service organizations outside the geographic area in draft WAC 284-43B-027(2).

Draft WAC 284-43B-027 generally hews to the payment mechanisms for nonparticipating ground ambulance service organizations that the Legislature specified in Section 8 of SSB 5986. However, there is one major exception: the draft rules appear to set forth a different payment standard for ground ambulance transport outside of the ground ambulance service organization's primary geographic area than was contemplated by the Legislature. We are concerned that this difference may increase ground ambulance costs for enrollees.

Section 8 of SSB 5986 specifies that in instances where the payment rate is not set locally, the rate shall be the lesser of: (1) 325% of the Medicare rate "for the same service provided in the same geographic area," or (2) billed charges. As codified in RCW 48.49.200(3), the relevant language reads as follows:

(3) Until December 31, 2027, the allowed amount paid to a nonparticipating ground ambulance services organization for covered ground ambulance services under a health plan issued by a carrier must be one of the following amounts:

(a) (i) The rate established by the local governmental entity where the covered health care services originated for the provision of ground ambulance services by ground ambulance services organizations owned or operated by the local governmental entity and submitted to the office of the insurance commissioner under RCW 48.49.205; or

(ii) Where the ground ambulance services were provided by a private ground ambulance services organization under contract with the local governmental entity where the covered health care services originated, the amount set by the contract submitted to the office of the insurance commissioner under RCW 48.49.205; or

(b) If a rate has not been established under (a) of this subsection, the lesser of:

(i) 325 percent of the current published rate for ambulance services as established by the federal centers for medicare and medicaid services under Title XVIII of the social security act for the same service provided in the same geographic area; or

(ii) The ground ambulance services organization's billed charges.

We interpret this language to mean that where there is no locally-set rate, the rate shall be the lesser of 325% of Medicare or billed charges *in all instances*, using the relevant rate for the geographic area where the service was provided.

Section 2 of WAC 284-43B-027 interprets this standard differently, indicating that where a ground ambulance services organization provides a transport outside of their

geographic area, the rate will be the lesser of the locally-set rate or billed charges. The relevant draft language states:

- (2) Until December 31, 2027, when a ground ambulance services organization provides a ground ambulance transport outside of their geographic area, the rate paid is the lesser of:
- (a) The locally set rate for the geographic service area where the transport originated; or
 - (b) The ground ambulance service organization's billed charges.

We are concerned that this approach in the draft rules: (1) has no basis in the plain language of the statute, which does not offer a third pathway for rates outside the geographic area of the ground ambulance service organization, and (2) could give ground ambulance service providers carte blanche to charge whatever price they prefer for services outside their primary geographic area, where there is not a locally-set rate. This could drive up costs for consumers. We seek clarification about why OIC has suggested this approach in the draft rules. We welcome dialogue on this topic if there is an explanation we do not yet understand.

3. We strongly support the consumer protections for behavioral health emergency services in draft WAC 284-170-205.

We appreciate the provisions of draft WAC 284-170-205 that reinforce the Legislature's intent to protect consumers against surprise bills and related access challenges for behavioral health emergency services. It is now well-recognized that Washingtonians are facing a behavioral health crisis that is exacerbated by challenges obtaining emergency mental health and substance use disorder services. Investigative reporting by the *Seattle Times* has confirmed serious problems in Washington issuers' behavioral health provider networks, as well as the acute need for emergency behavioral health services across multiple settings to prevent morbidity and mortality.¹ We support the OIC's efforts to address these challenges by implementing relevant provisions of SSB 5986 in a robust fashion in the draft rules.

Thank you for the opportunity to provide feedback on this rulemaking. We look forward to continuing to working with you and other stakeholders to ensure that Washington are afforded strong protections against ground ambulance balance billing.

Sincerely,

¹ See generally, <https://www.seattletimes.com/seattle-news/mental-health/>

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