OFFICE of the INSURANCE COMMISSIONER
WASHINGTON STATE

Balanced Billing Protection Act Arbitration Proceedings

Annual Report

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BBPA Background

The Washington State Legislature enacted the Balanced Billing Protection Act (Chapter 427, Laws of 2019) to protect consumers from surprise billing, also called balance billing, when they receive out-of-network emergency medical services and out-of-network surgical or ancillary services at an in-network hospital or ambulatory surgical facility. The Balance Billing Protection Act (BBPA) went into effect on Jan. 1, 2020.

For services subject to the BBPA, when an out-of-network health care provider or health care facility (hereinafter "provider") submits a claim to a carrier, the allowed amount paid to that provider must be a commercially reasonable amount, based on payments for the same or similar services provided in a similar geographic area. RCW 48.49.030(2). The BBPA includes a process for out-of-network providers to dispute an initial payment from a carrier. If, after a 30-day period of informal negotiation, the carrier and provider cannot resolve the dispute, the provider or carrier can initiate arbitration proceedings. The BBPA sets out timelines for each of the steps in the dispute resolution and arbitration process. (See RCW 48.49.030 - .040).

The BBPA is structured to allow providers to address multiple claims in a single arbitration proceeding. These "bundled" claims must:

- Involve identical carrier or facility parties.
- Involve claims with the same or related billing codes.
- Occur within a period of two months of one another.

Under RCW 48.49.040, once an arbitrator has been chosen, each party must submit its written materials to the arbitrator within 30 days. The arbitrator's decision is made based upon the written materials submitted by the parties. Within 30 days of receiving the parties' submissions, the arbitrator must issue a written decision requiring payment of the final offer amount of either the party that initiated the arbitration or the party that responded to the arbitration, i.e. the final offer amount of the carrier or the provider, and notify the parties of its decision. The arbitrator must provide the decision and information required for this report to OIC.

The BBPA directed OIC to contract with the Office of Financial Management to develop an all-payer claims database (APCD) to inform provider and carrier negotiations related to "commercially reasonable amount" and to assist arbitrators in evaluating the final offer amounts of the parties.

RCW 48.49.050 requires the Commissioner to submit an annual report to the Legislature from 2020 through 2024, the first five years the BBPA is in effect. The report must summarize information from the arbitrators' decisions, and provide the following information for each dispute resolved through arbitration:

- The name of the carrier.
- The name of the health care provider.

- The health care provider's employer or the business entity in which the provider has an ownership interest.
- The health care facility where the services were provided.
- The type of health care services at issue.

Implementation of the BBPA arbitration provisions

OIC has worked to implement the BBPA in as transparent a manner as possible. After extensive input from and discussions with stakeholders, OIC adopted rules to implement the BBPA in November 2019 (Chapter 284-43B WAC). OIC consulted often with stakeholders regarding additional implementation activities, including minimum qualifications for arbitrators and other aspects of the arbitration process.

In addition, OIC developed a BBPA website that is designed to make extensive information regarding the act easily accessible to consumers, providers, carriers and self-funded group health plans that elect to extend the protections of the BBPA to their plan members.

The arbitration page of OIC's website includes an online application for individuals and entities to apply to serve as arbitrators, a list of approved arbitrators and arbitration entities, and a form for submitting requests to initiate arbitration. The page includes a link to the APCD as well as extensive explanatory information and instructions on how to find information in the database. The site includes a form for arbitrators to use when submitting their decisions to OIC to ensure that all of the information required for preparation of this report is available to OIC.

The BBPA website includes an online form for use by self-funded group health plans that elect to participate in the act, as well as an updated list of the plans that are participating. To date, over 200 self-funded group health plans have elected to offer BBPA protections to their enrollees.

2020 Arbitration Report

For annual reports filed in July 2021 through July 2024, OIC will report the results of arbitration decisions for the previous calendar year, i.e. the July 2021 report will reflect arbitration decisions issued in calendar year 2020. For this initial 2020 report, there are no arbitration decisions to report. In the absence of arbitration decisions, this report will provide initial information and impressions regarding the arbitration process.

As of June 2020, six individuals and four arbitration entities are approved BBPA arbitrators. OIC updates the arbitrator lists as additional applications are approved and has not limited the number of individuals or entities that can serve as arbitrators.

As of June 2020, OIC has received 46 requests to initiate arbitration. Almost all of the requests have been submitted as bundled claims by provider practice groups. To date, the requests have been submitted by anesthesiology and emergency medicine groups.

The BBPA statute includes specific timelines that must be met in order to initiate arbitration. OIC reviews each request to determine whether the statutory timelines have been met. To date, a number of requests have been rejected due to failure to comply with these timelines. In addition, a significant number of arbitration requests have included claims for health plans that are not subject to the BBPA, including claims for self-funded group health plans that have not elected to participate in the BBPA. OIC has been responding to inquiries regarding the arbitration process from provider groups and provider practice management or billing entities, as well as carriers.

OIC hosted three webinars in June 2020 for providers, carriers and arbitrators to provide more detailed guidance regarding the arbitration process and its statutory and regulatory requirements. OIC also has streamlined processes and standardized communication with entities submitting requests to initiate arbitration. In addition, OIC is engaging in BBPA rulemaking in 2020 to clarify the rules adopted in 2019. This rulemaking will be informed by what OIC, carriers, providers, third-party billers and practice managers have learned regarding the BBPA in operation.