PROPOSED RULE MAKING

CR-102 (October 2017) (Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Office of the Insurance Commissioner

☐ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

☐ Preproposal Statement of Inquiry was filed as WSR 19-13-077; or
☐ Expedited Rule Making—Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
☐ Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Implementation of the Balance Billing Protection Act (Chap. 427, Laws of 2019).

Insurance Commissioner Matter R 2019-4

---

Hearing location(s):

Date: November 5, 2019

Time: 11:30am

Location: Office of the Insurance Commissioner

5000 Capitol Blvd SE

Tumwater, WA 98501

---

Date of intended adoption: November 15, 2019

(Note: This is NOT the effective date)

Submit written comments to:

Name: Jane Beyer

Address: PO Box 40260, Olympia, WA 98504-0260

Email: rulescoordinator@oic.wa.gov

Fax: 360-586-3109

Other:

By (date) November 4, 2019

Assistance for persons with disabilities:

Contact Melanie Watness

Phone: 360-725-7013

Fax: 360-586-2023

TTY: 360-586-0241

Email: MelanieW@oic.wa.gov

Other:

By (date) November 4, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposal includes rules determined by OIC to be necessary to implement and administer the Balance Billing Protection Act. The rules includes:

- Definitions of key terms
- Key consumer protections
- Process related to OON provider claim submission, carrier payment and dispute resolution
- The means through which providers can determine whether a patient’s health plan is subject to the requirements of the Act
- When and in what format the OIC consumer notice must be used, and clarification of the provider/facility and carrier transparency requirements of the Act, including providing consumers with sufficient information to understand whether a services they plan to, or have received, is subject to the protections of the Act
• For purposes of enforcement, OIC’s interpretation of “pattern of unresolved violations”,
• Processes related to self-funded group health plan opt-in, and
• Amendment to WAC 284-170-480 needed to implement section 30 of the Act.

**Reasons supporting proposal:** The proposed rule provides clarity regarding several aspects of implementation and administration of the Balance Billing Protection Act, which will contribute to successful implementation of the Act and its consumer protections.

**Statutory authority for adoption:** 48.02.060, §15, Chap. 427, Laws of 2019

**Statute being implemented:** Balance Billing Protection Act, Chap. 427, Laws of 2019

**Is rule necessary because of a:**
- Federal Law? [ ] Yes [ ] No
- Federal Court Decision? [ ] Yes [ ] No
- State Court Decision? [ ] Yes [ ] No

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Mike Kreidler, Insurance Commissioner [ ] Private [ ] Public [ ] Governmental

**Name of agency personnel responsible for:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Office Location</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drafting:</td>
<td>Jane Beyer</td>
<td>P.O. Box 40260 Olympia WA</td>
</tr>
<tr>
<td>Implementation:</td>
<td>Molly Nollette/Todd Dixon</td>
<td>P.O. Box 40255 Tumwater WA</td>
</tr>
<tr>
<td>Enforcement:</td>
<td>Toni Hood</td>
<td>P.O. Box 40255 Tumwater WA</td>
</tr>
</tbody>
</table>

**Is a school district fiscal impact statement required under RCW 28A.305.135?** [ ] Yes [ ] No

**Is a cost-benefit analysis required under RCW 34.05.328?** [ ] Yes: A preliminary cost-benefit analysis may be obtained by contacting:
- Name: Tabba Alam
- Address: P.O. Box 40260 Olympia WA
- Phone: 360-725-7170
- Fax:
TTY:
Email: TabbaA@oic.wa.gov
Other:
☐ No:  Please explain:
Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, may be exempt from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b) (Internal government operations)
☐ RCW 34.05.310 (4)(c) (Incorporation by reference)
☐ RCW 34.05.310 (4)(d) (Correct or clarify language)
☐ RCW 34.05.310 (4)(e) (Dictated by statute)
☐ RCW 34.05.310 (4)(f) (Set or adjust fees)
☐ RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under RCW ______.

Examination of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is not exempt, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency’s analysis showing how costs were calculated.

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: October 2, 2019
Name: Mike Kreidler
Title: Insurance Commissioner

Signature: __________________________
WAC 284-170-480 Participating provider—Filing and approval.

(1) An issuer must file for prior approval all participating provider agreements and facility agreements thirty calendar days prior to use. If a carrier negotiates a provider or facility contract or a compensation agreement that deviates from an approved agreement, then the issuer must file that negotiated contract or agreement with the commissioner for approval thirty days before use. The commissioner must receive the filings electronically in accordance with chapters 284-44A, 284-46A, and 284-58 WAC.

(2)(a) An issuer may file a provider or facility contract template with the commissioner. A "contract template" is a sample contract and compensation agreement form that the issuer will use to contract with multiple providers or facilities. A contract template must be issued exactly as approved.

(i) When an issuer modifies the contract template, an issuer must refile the modified contract template for approval. All changes to the contract template must be indicated through strike outs for deletions and underlines for new material. The modified template must be issued to providers and facilities upon approval.

(ii) Alternatively, issuers may file the modified contract template for prospective contracting and a contract addendum or amendment that would be issued to currently contracted providers or facilities for prior approval. The filing must include any correspondence that will be sent to a provider or facility that explains the amendment or addendum. The correspondence must include sufficient information to clearly inform the provider or facility what the changes to the contract will be. All changes to the contract template must be indicated through strike outs for deletions and underlines for new material.

(iii) Changes to a previously filed and approved provider compensation agreement modifying the compensation amount or terms related to compensation must be filed and are deemed approved upon filing if there are no other changes to the previously approved provider contract or compensation agreement.

(b)(i) All negotiated contracts and compensation agreements must be filed with the commissioner for approval thirty calendar days prior to use and include all contract documents between the parties.

(ii) If the only negotiated change is to the compensation amount or terms related to compensation, it must be filed and is deemed approved upon filing.

(3) If the commissioner takes no action within thirty calendar days after submission, the form is deemed approved except that the commissioner may extend the approval period an additional fifteen calendar days upon giving notice before the expiration of the initial thirty-day period. Approval may be subsequently withdrawn for cause.

(4) The issuer must maintain provider and facility contracts at its principal place of business in the state, or the issuer must have access to all contracts and provide copies to facilitate regulatory review upon twenty days prior written notice from the commissioner.

(5) Nothing in this section relieves the issuer of the responsibility detailed in WAC 284-170-280 (3)(b) to ensure that all provider and facility contracts are current and signed if the provider or fa-
facility is listed in the network filed for approval with the commissioner.

(6) If an issuer enters into a reimbursement agreement that is tied to health outcomes, utilization of specific services, patient volume within a specific period of time, or other performance standards, the issuer must file the reimbursement agreement with the commissioner thirty days prior to the effective date of the agreement, and identify the number of enrollees in the service area in which the reimbursement agreement applies. Such reimbursement agreements must not cause or be determined by the commissioner to result in discrimination against or rationing of medically necessary services for enrollees with a specific covered condition or disease. If the commissioner fails to notify the issuer that the agreement is disapproved within thirty days of receipt, the agreement is deemed approved. The commissioner may subsequently withdraw such approval for cause.

(7) Provider contracts and compensation agreements must clearly set forth the carrier provider networks and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable to the commissioner so that a reasonable person will understand and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.